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A MANUAL
OF THE LAW OF
REGISTRATION OF TITLES
TO
REAL ESTATE
IN
MANITOBA AND THE NORTH-WEST TERRITORIES.

BY
LOUIS WILLIAM COUTLÉE.,
Barrister-at-Law.

TORONTO:
CARSWELL & Co., LAW PUBLISHERS.
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PRINTED BY
THOS. MOORE & CO., LAW PRINTERS
22 & 24 ADELAIDE ST. EAST,
TORONTO.

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PREFACE.

THIS manual of the Real Property Acts of Manitoba and the North-West Territories is intended to present the Laws in a form more convenient for reference than that in which they appear in the statute books; to which have been added an analytical index, tariffs, forms, and some notes on the Provisions of the Statute in relation to the Land Titles Offices in Manitoba based on the practical experience of the author during the time he was Registrar-General for the Province under the Real Property Act of 1885 and its amendments. But few cases of any importance relating to these Acts have been decided, and fewer still have been reported, so that as yet we cannot be said to have any settled jurisprudence on the subject. Such cases as have been decided are referred to after the sections to which they particularly relate, and notes from a few Australian cases have been also introduced; but no attempt has been made to apply the decisions of other colonial courts to these statutes, the author considering it best to abstain as far as possible from making suggestions regarding interpretation, except where our Canadian courts or the practice of our Land Titles Offices have decided as to construction.

An Introductory Analysis of the Act has been given, considering under their proper heads the different subjects treated of in dispersed portions of the Acts, which it is hoped may assist in the examination and application of the provisions of the new laws that have so revolutionized generally accepted ideas of conveyancing.

In the compilation of this treatise the author has freely availed himself of much useful matter contained in Mr.

Thomas a'Beckett's work on the Transfer of Land Statute of Victoria, and Mr. Herbert C. Jones' work on the "Torrens' System" of Transfer of Land in Canada. To both these gentlemen this acknowledgment is due, and reference must still be had to their works for much valuable material which it has not been considered advisable to include in this manual, designed rather as a handy book of the Statutes than a dissertation upon their principles.

The author has not deemed it useful to enter into a discussion upon the merits and advantages of the system of registration of titles considered with reference to the indexing and transfer of real property. The merits of the new system have been admitted in Canada when it was practically applied by the Legislatures of British Columbia, Manitoba and Ontario, as well as by the Dominion Parliament, through the enactment of statutes dealing with the subject in these Provinces and the North-West Territories. Similar systems are in operation in parts of Great Britain and Ireland and in most of the British Colonies and possessions in the Pacific; also in Turkey in Europe, in Prussia, in Hesse-Darmstadt and Zurich, and especially in the last-mentioned communities have the highest commendation from juridical writers. The author can but add his humble appreciation of the system, as being much preferable to mere registration of deeds. The Torrens' system is the most important of all modern land reforms, and, as was said by an eminent English writer, in the *Fortnightly Review*, April, 1885 (referring to Lord Cairns' Act, 1862), it deals a death blow to the old doctrine which depended on the theory that land was not to be dealt with freely, and renders real estate as negotiable as any other property.

Those desiring to become better informed on the subject of land transfer and registration by title are referred to the following list of magazine articles and publications in addition to that above referred to:

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Land Reformers, by the Duke of Argyle, in *The Contemporary Review* of April, 1885 ;

Question of Land, Rt. Hon. G. Shaw Lefevre, *Nineteenth Century*, October, 1885 ;

Transfer of Land, Howard W. Elphinstone, *Law Quarterly Review*, January, 1886 ;

An American View of the English Land Problem, John Swann, *National Review*, January, 1886 ;

The Laws Relating to Land, Sir J. F. Stephen, *National Review*, February, 1886 ;

Free Land, Rt. Hon. Lord Hobhouse, *Contemporary Review*, Part I., February, and Part II., March, 1886 ;

Registration of Title to Land, Thos. Kay, *Law Quarterly Review*, July, 1886 ;

Registration of Title to Land, editorial *Westminster Review*, July, 1886.

British Parliamentary Reports :

Second Report of the Real Property Commissioners, 1832 ;

Report of the Registration and Conveyancing Commissioners of 1850 ;

Report of the Commissioners appointed to consider the subject of Registration of Title with reference to the Sale and Transfer of Land of 1857 ;

Report of Special Committee of the House of Commons on Land Titles and Transfer of 1878-9.

Handy Book on the Registration of Title and Transfer of Land, F. Hoare Colt, London.

Remarks on the Land Transfer Question (1873) and Supplementary Suggestions (1885), F. Hoare Colt.

Lord Cairns' Land Transfer Act of 1875 ;

The Reform in the English Land System, Hon. G. C. Broderick, London, 1883 ;

Chapter X. on Classification of Property, from "Early Law and Custom," Henry Sumner Maine, London, 1883.

Article on "Registration," *Encyclopædia Britannica*.

Handy Book of the Land Transfer Acts (Torrens' System) containing copies of Acts, issued from the Office of the Registrar-General of Land. By authority, Wellington, New Zealand (1878);

Registration of Title in the British Colonies, House of Commons Returns by Colonial Authorities (1881).

Supplementary Returns to the House of Commons, Colonial Authorities upon the "System of Conveyancing by Registration of Title" in operation in South Australia, Queensland, New South Wales, Victoria, Tasmania, Western Australia, New Zealand, British Columbia and Fiji, made up to 31st December, 1879.

The Torrens' System of Conveyancing. Report to Legislature of the Straits Settlements, by W. E. Maxwell, Singapore (1883).

Land Transfer Reform, J. Herbert Mason, Toronto (1883).

Torrens' System of Land Transfer in Ontario and Manitoba, Herbert C. Jones, Toronto (1886).

An Essay on the Transfer of Land by Registration. Sir R. Torrens. Published by the Cobden Club.

Practice of the Office of Titles of Victoria, Sedgefield.

Introduction and Notes to the Transfer of Land Statute (Victoria), by Thomas a'Beckett (containing advice by the Commissioner of Titles—very useful—see pages 83 and 84 *post*); 2nd Ed., with additional notes by Frank Gavan Duffy, (Melbourne, 1883).

Report of the Royal Commission of Inquiry into the Working of the Real Property Acts, 1861-1877, Queensland (1879).

Land Transfer Reform: Scientific Registration and Indexing of Land Records, &c., Dwight H. Olmstead, New York (1887).

Registration of Titles: Prize Essay. R. Burnet Morris, London (1886).

Statement on the Land Laws, by the Council of the Incorporated Law Society of London (1886).

Land Transfer : published by order of the Bar Committee, London (1886).

The last three publications give a fair idea of the opinion of the English Bar upon the subject.

All the above-mentioned pamphlets and publications, some of which are even now difficult to procure, ought to be found on the shelves of every law library in Canada and the United States of America, in view of the fact that the system of Title Registration is destined very soon to supersede all other systems of Land Registration and Transfer at present in use. Owing to the absence of many of the most important writings from any of our Provincial libraries the author has, in a number of cases, been obliged to rely upon the notes and abstracts of others where the publications themselves ought to have been consulted had it been possible.

The Real Property Act of 1889 (Manitoba) combines the principles of registration of title with the provisions of the former statutes relating to the registration of instruments affecting titles to land, distinguishing them as the "old system" and the "new system," the effect being to reduce the cost of bringing lands under the operation of the Torrens System, while leaving it optional with the owner to allow his property to remain subject to the old system of deed registration. The Statutes of the Province are about to be revised and consolidated, it has therefore not been deemed advisable to print the Acts respecting the registration of deeds and the duties of registrars of deeds with this manual, as they will no doubt be considerably revised and amended during the process of consolidation in order to decrease the friction that may be expected to arise from the joint administration of two systems so essentially differing from each other.

It has not been found practicable to give notes of any consequence with the text of the Territorial Act, but references have been made in all possible cases to the corresponding provisions of the Manitoba Statute which will answer the purpose of a table of concordance, and thus the rules and precedents established in the Land Titles Offices in Manitoba may be more readily applied in the North-West Territories. The side notes printed with the Territorial Act are not the same as those which appear in the authorised editions of the statute; this fact has been noted on the title page of Part III.

An acknowledgment is due to Mr. W. E. Macara, Inspector of Land Titles Offices for Manitoba, and to Mr. P. M. Barker, Inspector for the Territories, for their kind counsel and assistance during the compilation of this work.

The author cannot hope to have escaped error in entering upon so wide a field almost without any guidance from the reports, but he does hope that the comments and the references given may prove useful practice.

NO. 3 LONDON AND CANADIAN CHAMBERS,
Winnipeg, Manitoba, January, 1890.

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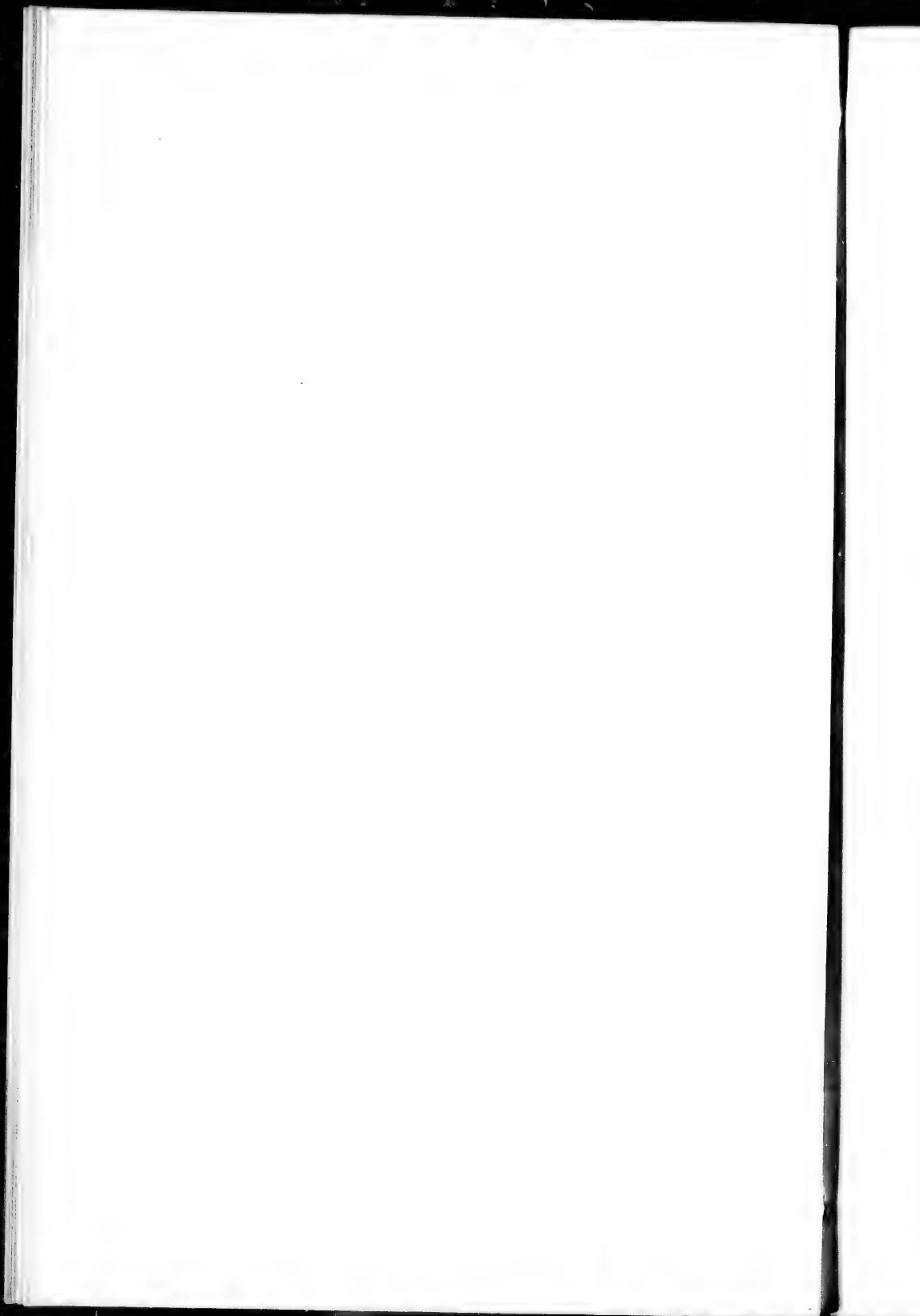
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ADDITIONS AND CORRECTIONS.

Note references to Appendix at each section of the R. P. Act of 1889 amended by Cap. 5 of 53 Vict. (Man.)

Page viii—Insert the word “in” between the words “useful” and “practice” in the last line of Preface.

- “ 45—Sixth line, for “section” read “subsection.”
- “ 46—Note after sub-sections 22 and 26 references to the “Queensland Act of 1861, where corresponding provisions appear.”
- “ 64—Make clause 3 of the form of affidavit agree with the third clause of second form on page 81.
- “ 70—After section 27 note reference to “49 Vict. cap. 13.”
- “ 71—After sec. 28, note reference to “sec. 52 *post* and 46 and 47 Vict. cap. 28.”
- “ 73—Note after second paragraph that “53 Vict. cap. 19, which came into force 31st March, 1890, made provision for the appointment of an ‘Official Administrator’.”
- “ 75—Line 25. Note references to secs. 2, 18, and 152 (repealing clauses), and their effect as to the creation of estates tail.
- “ 82—Line 11, insert full stop after “followed.” and capital “I” for the word “in.”
- “ 112—Transpose note reference “(a)” in the fifth line to the end of fourth line.
- “ 125—Side note, sec. 27, strike out “*powers of attorney and substitution thereof.*”
- “ 126—Side note, sec. 23, for “power of attorney” substitute “copies.”
- “ 123—Line 15, *dele* comma after “sheriffs”: Line 20, for “devices” read “devises.”
- “ 131—Line 25, for “Victorian. No” read “Victoria, no.”
- “ 167—Line 15, for “Officer” read “Office.”
- “ 172—Line for “financiarly” read “fiduciary.”
- “ 18;—*Dele* full stop at end of 11th line, and substitute a small “n” for “notice” in 12th line.
- “ 241—Line 11, for “confine” read “confirm.”

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INTRODUCTORY ANALYSIS
OF THE
"NEW SYSTEM" OF TITLE REGISTRATION.

When the Manitoba Legislature enacted "The Real Property Act of 1885," of which the Act of 1889 is practically a consolidation, the preamble recited that the Act was passed "to give certainty to the title to estates in land in the Province of Manitoba, and to facilitate the proof thereof, and also to render dealings with land more simple and less expensive." These are the same words as were used in the preamble of the Victorian Act, and, as in that Act, the objects aimed at are two-fold. Firstly, certainty of title and facility of proof; and, secondly, simplicity in dealing with land brought under the operation of the statute. This first result is obtained under the "New System" (the term used in the Real Property Act of 1889 to distinguish the system of registration by title from the "Old System" of registration by deed) by issuing a Certificate of Title, which is a special document provided by the Act that has the effect of declaring by statutory authority that the person therein mentioned as being the registered owner of the specified estate, has an indefeasible title thereto as against all the world, (a) and consequently dispensing with the series of documents theretofore neces-

(a) Secs. 64-67, 85, 133, 142, 143 and 147.

sary as evidence of title shewing the changes in ownership from the original grant, and at each change giving rise to enquiry as to the validity of the conveyance, the expense and professional skill being of necessity increased with every link in the chain of title. Under the old system an unwilling purchaser might in most cases indefinitely multiply technical objections and eventually, after much tedious delay, have a perfectly safe-holding title rejected as unmarketable; and even if he failed in doing so, the investigation made on his behalf was never conclusive, and the same expense and annoyance might be repeated with additions on the occasion of every transaction respecting the land, going repeatedly over the same ground and causing much delay, for each solicitor called in to pass the title had to test every link in the chain of title for himself and assume the responsibility of passing it. Under the "new system" the Examiners of title in the Land Titles Office make one investigation final and conclusive, (b) and have special powers to facilitate their examination (c) into matters of title which greatly diminish the expense of an ordinary solicitor's investigation, and have also the great advantage under special provisions of the Act that although there may be technical defects in the title which would otherwise render it unmarketable, yet if the applicant can shew such a title as would secure him from ejectment, or what is known among lawyers as a "safeholding" title, (d) the defects are cured by the issue of a certificate of title, unless personal fraud or misrepresentation, in which the person named as registered owner in the existing certificate has knowingly participated, can be distinctly established. (e) In cases where titles have become clouded or affected by claims or liens of a doubtful or irregular character, these can be at very small expense removed by estoppel

(b) Secs. 43 and 44.

(d) Sch. S, r. 3, s. 26.

(c) Secs. 49-57 and 108.

(e) Secs. 64 and 85.

notices specially provided by the Act, (*f*) which may be served on adverse claimants and their interests summarily and inexpensively disposed of.

The second aim of the Statute, simplicity in dealing with lands when once they have been made subject to its operation, is ensured by an essential uniformity enforced by the Statute, in all instruments of a similar class (*g*) according to short forms prescribed, but which may be modified by express stipulation (*h*) of the parties; and by the statutory provision suspending all change of proprietorship until registration has been effected. (*i*) Every regular instrument intended to affect lands, subject to the new system, when signed by the proprietor, and duly attested, is made effective as a direction to the registrar to make the necessary transfer or change, (*j*) but until duly registered no effect is given to the instrument in so far as the lands are concerned, it merely gives rise to rights between the parties, but no estate in the lands passes until registration has been duly effected by the proper public officer (*k*), and he can act only according to the provisions of the Statute. The title to the lands mentioned in the certificate being guaranteed as indefeasible by the Government, the warrantor is thus given the right of being made cognizant of every act by which, in any way, it is intended to be modified or affected. (*l*)

As a consequence of this necessary restriction placed upon the alienation of lands under the operation of the new system, the entry of any memorial respecting trusts is forbidden to be made in the register (*m*), and except in the case of personal fraud, no one can be affected by notice

(*f*) Secs. 52 and 57.

(*g*) Sec. 77.

(*h*) Sec. 144.

(*i*) Sec. 74.

(*j*) Sec. 81

(*k*) Sec. 74.

(*l*) Sch. S. r. 16, s. 26, and secs. 68 (5) 76 and 77.

(*m*) Sec. 86.

of any trust or unregistered interest respecting such lands (n), and the knowledge of any such trust or interest shall not of itself be imputed as fraud. (o) Trusts, however, are not abolished under the new system, they may exist as between the parties, and the trust deed may be deposited in the Land Titles Office for safe custody and reference, but the responsibility of enquiring as to trusts is shifted from the purchaser, and it now rests upon the beneficiary to take means to protect his interests against improper dealings by lodging a caveat, or by taking proceedings for the removal of the trustee. (p)

The system under which trusts are enforced by Courts of Equity has not been disturbed (q) nor has an attempt been made to prevent the enforcement of claims against actual or constructive trustees, but under the new system a person does not become a trustee merely because he holds trust property. The obligation has been made personal to the trustee himself, and the *bona fide* registered owner although a bare trustee has absolute title against the *cestui que trust*. (r) Power is reserved to the Registrar to prevent improper dealing with lands, (s) and in this way he may in suspicious cases prevent a breach of trust; the beneficiary may file a caveat to protect his rights, (t) but in the absence of fraud on the part of the purchaser he gets a good title upon registration under the new system, (u) although the transfer to him was in breach of trust.

(n) Secs. 85, 133 and 143.

(o) Sec. 85.

(p) Secs. 86 and 113-117.

(q) Secs. 117, 123, 129.

(r) Secs. 64, 85, 117.

(s) Sec. 68 (5)

(t) Sec. 130.

(u) Secs. 64, 85, and 133.

THE ACT OF 1889.

The Manitoba Real Property Act of 1889 is the one with which this introduction is principally intended to deal, and, as will be seen, it is not merely a consolidation of the Real Property Act of 1885 and its amendments, but several additional amendments suggested by the practical operation of the former Acts have been made, as well as the necessary alterations to secure the harmonious working of the dual system now introduced. Provision is also made to secure the carrying on without interruption, or at least with as little interruption as possible, of cases pending under the Acts repealed, (v) and that dealings with land which had been brought under the operation of the repealed Acts might be continued in the district within which they might be included upon the establishment of the new offices, in the same manner as if they were lands subject to those provisions of the new law which the present Statute designates the "New System."

The administration of the Acts in both Manitoba and the North-West Territories of Canada is effected through Land Titles Offices, established by the Government in Land Titles Districts, which districts are constituted by the Lieutenant-Governor in Council in Manitoba; in the Territories they are defined by the Statute. The offices in Manitoba are included amongst those forming the Provincial civil service. (w)

In Manitoba, as each Land Titles District was constituted under the present Act, and Land Titles Offices established, the originals or copies of all registers, books, instruments and entries of instruments in the office of the Registrar-General at Winnipeg, were furnished to the offices for the

(v) Secs. 10-19.

(w) Sec. 151.

district within which the lands affected were situated, to be thereafter dealt with as if they had been made and registered under the new Act; (x) the office of the Registrar-General ceased to exist on 30th October, 1889, (y) and the system became decentralized, each Land Titles Office having exclusive jurisdiction (z) within the district for which it had been established, except that where lands subject to the Act of 1885, either before or after the issue of a certificate of title, happened to be in a division for which no Land Titles District had been constituted, then, until it became included in some other district, all dealings affecting it were to be made in the Land Titles Office for Winnipeg, (a) where in the meantime all records affecting lands in unorganized districts remained on file.

The County Registry Offices for the registration of deeds, etc., ceased to exist, (b) and the Registrars of Deeds were relieved of their duties under the "Lands Registration Act of Manitoba," so soon as the lands registration division was included in any Land Titles District constituted under the present Statute and all the records of the offices so abolished were transferred (c) to the proper Land Titles Office in a manner similar to that provided for the distribution by the Registrar-General of the archives of the old Land Titles Office at Winnipeg.

Each Land Titles Office has at its head a District Registrar, (d) who, in addition to his powers under the Real Property Act, has also all the powers, and is required to perform all the duties of a registrar of deeds under the provisions of the "Lands Registration Act of Manitoba;" (e) he is assisted by deputies, examiners of titles, a draughts-

- (x) Sec. 10.
- (y) Sec. 18.
- (z) Sec. 35.
- (a) Sec. 36.

- (b) Sec. 14.
- (c) Sec. 11.
- (d) Sec. 5.
- (e) Secs. 15-17

man and clerks appointed for each district. (f) Every district Registrar or deputy district Registrar under the new system must be either a barrister or an attorney in the Courts of the Province of Manitoba. (g) There is also an "Inspector" for the Province, (h) which office is at present combined with that of the District Registrar for the Land Titles District of Winnipeg.

In the Territories (i) the Governor General of Canada in Council has the establishment of a Land Titles Office within each district, and the appointment of the "Registrar" to conduct the business of the office with such assistants and clerks as are necessary, and as the Governor in Council from time to time appoints, including a deputy to act in case of the death, illness, or absence from his office of the registrar. The qualification required of a Registrar is that he shall be a barrister or advocate of at least three years, standing in one of the provinces of Canada.

The officials both in Manitoba and the Territories are required to give security for the faithful performance of their duties, (j) they are prohibited from practicing as conveyancers, etc., and are indemnified for acts done in the discharge of the duties of their office. (k)

The Land Titles Offices in Manitoba are open to the public from 10 a.m. to 3 p.m.; (l) those in the Territories from 10 a.m. to 4 p.m. (m) The Manitoba offices are directed to open and close by *standard* time. (l)

The Lieutenant-Governor in Council has the power to make rules, etc., under the Manitoba Act, (n) while the Governor General in Council exercises similar powers in the Territories. (o)

(f) Secs. 6, 7 and 15.

(g) Secs. 5 and 7.

(h) Sec. 6.

(i) T. secs. 21-23.

(j) M. sec. 8. T. secs. 26 and 27.

(k) M. Secs. 20 and 23; T. secs. 31 and 32.

(l) Sec. 24.

(m) T. sec. 33.

(n) Sec. 26.

(o) T. sec. 132.

Upon the introduction of these Real Property Acts in Manitoba and the Territories it appears to have been considered necessary to embody amongst their provisions certain amendments of the general law respecting lands whether they were or were not subject to the new system of registration. (p) Practical experience has shewn that it might have been better to have made these provisions the subject of a special statute, and they have been and still are matters of considerable differences of opinion. These alterations of the law are noticed under the sections of the statute by which they have been effected ; on reference to the notes some of the difficulties which they have created will become apparent.

BRINGING LAND UNDER THE ACT.

The manner of bringing lands under the operation of the Act in Manitoba is similar to that provided by the Act of 1885, except that there is now no necessity of registering a certificate of the filing of the application to close any other office against registrations affecting the land sought to be made subject to the new system, both systems being combined under the same administration.

The District Registrar upon receipt of the application simply notes the filing upon the Abstract Book kept by him under the system of registration of deeds, and the filing of the application has at once the effect of preventing any further registrations under the old system affecting the lands therein mentioned. (a) No lands become subject to the new system until such an application has been filed, and no

(p) Man. secs. 27-34, and T. secs.
5-17.

(a) Sec. 42.

application can be filed for lands not included within the limits of some one of the Land Titles Districts. (b) All applications must, except in special cases, be in writing and signed by the owner of the estate or interest in the land or his duly constituted agent or attorney, (c) and should request the District Registrar to register the title under the new system. The nature of the estate or interest, its value, the description of the property, the deeds held by applicant, and the encumbrances, if any, which affect the land should be clearly stated, as well as adverse claims through occupation or otherwise if there are any of which the applicant may be aware. The substantial correctness of all the allegations in the application is also required to be proved (d) by the oath or affirmation of the applicant, or some person having a personal knowledge of the facts. The title is then examined by one of the official Examiners of titles, (e) and if favorably reported upon, after all defects have been removed, the District Registrar registers the title and issues a certificate to the person in whose name it has been registered, (f) The holder of a legal or equitable estate is entitled to have his title registered, and a certificate issued to him therefor. The owner of an equity of redemption may apply to have mortgaged lands registered, (g) and by such application the whole estate would be made subject to the new system. Applications may be made by parents, guardians or committees respecting the lands of infants, lunatics or persons of unsound mind; if there is no guardian or committee the District Registrar may appoint one to act in the case, and attorneys having authority to sell lands may apply to have them brought under the new

(b) Sec. 35.

(e) Sec. 43.

(c) Rules 2-7, Sch. S. s. 26 and sec. 40.

(f) Secs. 44 and 58.

(g) Secs. 40 and 59.

(d) Rule 2, Sch. S. s. 26.

system unless specially prohibited from so doing by the power of attorney. (*h*)

If the applicant or person acting on his behalf has power to convey the land he may in his application, or by a special request in writing filed afterwards and prior to registration of the title, direct the certificate of title to issue to some other person, and such a direction from the time it is filed vests all the applicant's estate or interest in the person so named, who may be registered as owner. (*i*) In such cases the signature of the applicant must be verified by the oath of a subscribing witness in the same manner as instruments intended for registration under the old system. (*i*) Applications may be withdrawn with the consent of all parties interested, and the evidence of title returned to the applicant or person appearing to the District Registrar to be entitled to them, but any person who has been compelled to file a caveat may on application to a Judge or summons in Chambers obtain compensation for any unreasonable expenses to which he may have been put on account of the application. (*j*) Applications may be rejected by the District Registrar, and in case of withdrawal or rejection the expense of re-opening the books of the old system for registrations affecting the property must be borne by the original applicant before he receives the rebate on fees paid. (*k*)

Should a withdrawal or a rejection be made subsequent to the filing of a "Direction," the effect of the re-opening of the books of the old system is to revest the lands in the person properly entitled to them, and the direction ceases to be notice of any claim to the lands by any of the parties thereto. (*l*)

(*h*) Secs. 41, 148.

(*i*) Sec. 45.

(*j*) Sec. 46.

(*k*) Sec. 47.

(*l*) Sec. 48.

Proceedings under the Act do not abate or become suspended by death or transmission or change of interest, but may be continued upon the order of the District Registrar; (*m*) nor does the death of any party executing an instrument, prevent its registration after his death. (*n*) Should it happen that the applicant or directee dies before the certificate of title has issued, it will nevertheless issue in his name, and the property will devolve as if it had issued prior to his death. (*o*)

Clouds may be removed from titles by means of estoppel notices which are given a special statutory effect, in addition to the effect of notice at common law, which bars any one personally served from setting up claims unless he acts promptly by filing a caveat, (*p*) or instituting proceedings to enforce his claims. Notices are served as in suits in Court, (*q*) but in cases where title is made through tax sale deeds substitutional service may in certain cases be allowed. (*r*)

The stricter rules of evidence as to title are relaxed in the investigation of titles so that the District Registrar and Examiners may pass titles for the purpose of registration under the new system with as much facility as a Judge proceeding under the Quieting Titles Act, equitable principles are observed, and in any matter of title they can examine witnesses and administer oaths and affirmations. (*s*)

The District Registrar has power to compel the attendance of witnesses and the production of documents, on summons, which may be enforced by the Court of Queen's Bench in like manner, by the same proceedings and with

(*m*) Sec. 49.

(*n*) Sec. 50.

(*o*) Sec. 51.

(*p*) Secs. 52, 147, Rule 23, Sch. S.

sec. 26.

(*q*) Secs. 54 and 55.

(*r*) Secs. 53, 57.

(*s*) Secs. 56, 68 and Rule 24, Sch.

S. sec. 26.

the same penalty, in the event of any disobedience, as subpoenas of such Court. (*t*) Doubtful matters of law or fact may be referred by the District Registrar for the opinion of the Court or a Judge, (*u*) and uncertain or difficult questions of administration can be referred by him to a Judge in Chambers. (*v*) After the registration of title the deeds, instruments and evidence of title filed are retained in the Land Titles Office, but where deeds relate to other property than that brought under the new system, they may in the discretion of the District Registrar be returned upon office copies being made to remain of record with the application.

REGISTERED TITLES.

A Certificate of Title dates from the time of registration, that is, so soon as it has been engrossed in the register and the original for the owner marked with the distinguishing symbol indicating the folio and volume of the register in which it had been engrossed. (*a*) This date is mentioned in the Certificate and in all cases it is to be taken as the date of the certificate of title until an encumbrance is registered upon it under the new system, when the date of the memorial of the last registered encumbrance becomes the date (*b*) of the certificate; the certificate must be in the form prescribed by the Act, and sealed with the official seal, and the duplicate in the register must be preserved by the District Registrar for reference in his office. (*c*) As the proprietor's interest is altered by dealings or other registrations affecting the land, memorials are made upon the duplicate, (*d*) which always shews the exact nature of the title of the registered owner, except in so far as it

(*t*) Secs. 68 (1), (2), (3) and 124.

(*u*) Sec. 119.

(*v*) Sec. 120.

(*a*) Sec. 58.

(*b*) Sec. 61.

(*c*) Secs. 60 and 147.

(*d*) Sec. 58 and Rules 13-17, Sch. S.
sec. 26.

may be affected by general liens resulting from the registration of judgments, Mechanics Liens and so forth, (*e*) or executions registered and kept in force under the Administration of Justice Act. (*f*) Every owner is entitled to have his estate or interest in land registered, and to receive a certificate for whatever may be his title or interest therein, (*g*) and if the proprietor be a minor or under any other legal disability, the age of the minor, or the nature of the disability to deal with his property must be stated on the face of the certificate. (*h*) Tenants in common may each receive separate certificates for their undivided shares, (*i*) and each may deal with his interest without the consent of the other.

Where an easement has been created affecting land under the new system, to be enjoyed together with other lands also under the new system, all the certificates must bear memorials of the easement so created or annexed to the lands. (*j*) Certificates of Title must also refer to any reservation of mines or minerals. (*k*)

The proprietor's title is not however enlarged by the issue of a Certificate of Title, as it is subject to certain implied qualifications (*l*) not specially mentioned. These are : 1. Reservations made in the Crown grant of the land ; 2. All taxes ; 3. Subsisting rights of way and easements ; 4. Subsisting leases or agreements for a lease, not over three years, where the lessee is actually in occupation ; 5. Judgments, decrees, orders and liens which may be registered after the date of the certificate, and without the necessity of a memorial being made upon it to indicate the alteration of interest thereby effected ; 6. Public highways are always excluded ; 7. Rights of expropriation vested in

(*e*) Sec. 63 (*e*).

(*f*) 52 Vic. c. 36, secs. 13-15.

(*g*) Sec. 59.

(*h*) Sec. 59.

(*i*) Sec. 62.

(*j*) Sec. 79.

(*k*) Sec. 84,

(*l*) Sec. 63.

corporations; 8. Certificates issued on first registration and others derived through the applicant owner, are void as against the rights of persons adversely in actual occupation, and entitled to the land or any part of it at the date of such first registration, provided such occupation is still continuing at the time of the issue of the subsequent certificate. (m)

The certificate issued to the proprietor and that preserved in the register are both original documents, but the one kept by the District Registrar bound up in the Register Book is called the duplicate. (n) The certificate is conclusive evidence in every court of law or equity that the registered owner has a valid title for the estate or interest therein described, and is sufficient to entitle him to a decree for specific performance against a person who may have contracted for the purchase of the land. (o) His title to the estate or interest is paramount (saving in the case of fraud and of the implied qualifications above mentioned) except as against a proprietor claiming the same land under a prior certificate of title, or through the holder of a prior certificate of title, and except where by mistake in describing the boundaries or parcels more land has been included than was intended, but this latter exception applies only when the holder of the certificate is neither a *bona fide* purchaser nor a mortgagee. (p) The certificate is an absolute bar and estoppel to any action of ejectment, or for the recovery of the land against the registered owner except under special circumstances, such as the exceptions just mentioned or in a case of default as mortgagor or lessee. (q)

The proprietor may be required to sign a receipt for his certificate or otherwise to furnish the district Registrar

(m) Sec. 65.

(n) Sec. 60, Rule 9, Sch. S. sec. 26.

(o) Secs. 66 and 147.

(p) Secs. 64, 85, 133, 142, 143 and 146.

(q) Secs. 67, 89, 103-107.

with his signature as a means of preventing fraud, (r) and in case of loss a provisional certificate of title may be issued in substitution of the one that is missing, (s) A proprietor holding certificates of title for several parcels of contiguous land on surrendering them for cancellation may, by request have one certificate issued for the whole of the lands, or if the lands are all in one certificate he may in a similar manner obtain several certificates, each for a portion of the land, (t) On a sale of part of the land a memorial of the transfer is endorsed on the certificate cancelling it as to the part sold, or it may be cancelled in full and a new certificate for the unsold portion issued to the owner, and in each case a new certificate of title is issued to the purchaser. Where all the land is transferred the old certificate is wholly cancelled and a new one issued to the purchaser who becomes registered owner. (u) On the loss of a certificate being satisfactorily accounted for its production may be dispensed with by the District Registrar on making a transfer; (v) and if it is held by a mortgagee or other person interested in the land he can compel its production for the purpose of allowing memorials to be made, (w) under the penalties imposed by the Act. (x) Old certificates may be cancelled and new ones substituted for them (y) when they have become illegible from accident or other cause.

Certificates of title are never signed during the time the Land Titles Offices are open for the registration of instruments, (z) nor until a final search has been made for liens or charges against the lands to be registered after the closing of the office for registration purposes, (a) and thus the liability of issuing certificates before all proper memorials and entries have been made is avoided.

(r) Rule 15, Sch. S. sec. 26.

(w) Sec. 68 (1) and 121.

(s) Sec. 68 (7).

(x) Sec. 149.

(t) Rule 21, Sch. S. sec. 26.

(y) Rule 28, sec. 26.

(u) Rules 16, 17 and 22, Sch. S. sec. 26. and sec. 73.

(z) Sec. 24.

(a) Rule 29, Sch. S. sec. 26.

(v) Sec. 68 (6).

REGISTRATION OF DEALINGS WITH LAND.

Mortgages or encumbrances may be registered after application and prior to the issue of the certificate of title; (a) and all instruments for registration under the new system, except transfers, may be in duplicate. They must contain the full names and additions of the parties, and with the exception of several specified official documents, they must be signed before a witness, who shall verify their execution in the manner required for the proof of instruments for registration under the old system. They are registered in the order of time in which they are presented for that purpose, and take priority accordingly. (b) They must substantially comply with the forms given in the Statute, on pain of rejection, as unfit for registration. (c)

Instruments in accordance with the forms in use, or sufficient to pass an estate in lands not subject to the new system, may be admitted for registration by order of the inspector, in which case they shall be held to contain all such covenants as are implied in instruments of a like nature under the new system; and for the purpose of sale or foreclosure under any mortgage so registered proceedings may be taken as if the lands were not subject to the new system, at the option of the mortgagee. (d) When the witness to an instrument is dead or absent from the Province, it may be registered upon a Judge endorsing a certificate that he has been satisfied by proof adduced of its due execution. (e) Should several instruments signed by the same person purporting to affect the same estate or interest be presented at the same time for the purpose of registration, that instrument shall be registered which is presented by the person producing the certificate or other evidence of title. (f)

(a) Sec. 95.

(c) Sec. 77.

(e) Sec. 75.

(b) Rule 18, Sch. S. sec. 26 and sec. 74.

(d) Sec. 77.

(f) Sec. 78.

Registration is effected by endorsing on every certificate or instrument evidencing title a memorial signed and sealed by the District Registrar, stating the nature of the instrument registered, the parties thereto, the time of its presentation as shown by the "Day Book," (g) and referring to the number or symbol distinguishing the instrument. (h) When so registered the instrument becomes part and parcel of the register for the purposes of the Act. (i) Here may be noted the principal difference in the effective nature of instruments under the new system, which do not become operative until registration; it is only after any such instrument has been so constructively embodied in the register, and stamped with the seal of the District Registrar, that it creates, transfers, surrenders or discharges the estate or interest therein mentioned. (j)

No instrument requiring endorsement on the certificate can be received or registered unless the certificate is produced or its production dispensed with, (k) and with every transfer or mortgage presented for registration a certificate from the treasurer of the municipality within which the lands affected are situated must be produced, (l) showing that the lands intended to be dealt with have not been sold for arrears of taxes under the provisions of the Municipal Act.

TRANSFERS.

Transfers of estates or interests in land under the new system may be made by the registered owner by endorsement on the certificate, mortgage, encumbrance or lease, (a)

(g) Rule 10, Sch. S. sec. 26.

(h) Rule 14, Sch. S. sec. 26 and sec. 76.

(i) Sec. 74.

(j) Sec. 74.

(k) Rule 17, Sch. S. sec. 26 and secs. 57 (a), and 68 (6).

(l) Rule 19, Sch. S. sec. 26.

(a) Secs. 72, 98.

or by a separate instrument, (b) which can not be received in duplicate. (c) Registration is effected by memorial on the certificate in the manner provided for the registration of instruments; (d) the existing certificate and the duplicate in the register are cancelled wholly or partially according as the transfer is of the whole or of part only of the interest of the transferror, (e) a new certificate is made registering the transferee as owner of the land transferred, and the old certificate, if wholly cancelled, is retained by the District Registrar with the memorandum of transfer. If the certificate is only partially cancelled it may be returned to the owner after the memorial has been entered upon it, or if requested or expedient a new certificate for the unsold portion or any part thereof may be issued to him. (f) It is the Statute and not the instrument of transfer that effects the alienation; the legal estate does not pass until registration. (g) No seal is required on the transfer and words of limitation are not necessary; (h) no covenants need be expressed, but unless otherwise specified, (i) there is a covenant by the transferee implied as to the payment of subsisting charges on the land. (j) Until registered any instrument signed by a registered owner or others claiming through or under him purporting to pass an interest or estate in land, confers on the transferee or assignee and others claiming through or under him a right to be registered as owners of such estate or interest, and for the purpose of securing such registration in cases of difficulty the District Registrar is given power, on summary application, to make orders and cause notices to be served to the end that the person properly entitled thereto may be registered as owner,

(b) Sec. 72, Sch. B. sec. 98, Sch. F. (f) Rules 16 and 22, Sch. S. sec. 26.

(c) Sec. 74.

(g) Secs. 74, 99.

(d) Rule 14, Sch. S. sec. 26 and
sec. 76.

(h) Sec. 28.

(e) Sec. 73.

(i) Sec. 144.

(j) Sec. 80.

due regard being had to the preservation of all rights acquired by priority of registration under the new system. (k) Upon registration of a transfer all the transferrer's estate or interest, as well as his rights and obligations, are transmitted to the transferee, and if it be of a mortgage or charge, the powers and right to sue pass to the transferee. (l) Persons acquiring estates or interests should be particular to obtain the production of the certificate of title and other instruments necessary to be endorsed with memorials of the registration and the alteration of interest thereby effected. (m) Husband and wife may validly make transfers to each other. (n)

The transferrer may exclude survivorship amongst joint trustees by inserting the words "No survivorship" in the transfer; and joint owners themselves may require the District Registrar to enter these words on their certificate of title. The effect in either case is to prevent any dealings with the lands unless all the joint proprietors are parties, or unless the sanction of the Court or a Judge be first obtained. (o) Before any directions are given, public notice may be required to be advertised, (p) after which the proper order may be made if necessary for the protection of those beneficially interested. (q) This inconvenient method of holding joint proprietorship will not likely be adopted except for the protection of *cestui que trusts* and for the tenure of land dedicated to public uses. Special proceedings are necessary to give effect to the transfer of lands sold for arrears of taxes after the period of redemption has expired. (r)

(k) Sec. 81.

(o) Sec. 82.

(l) Secs. 28, 74, 99 and 145.

(p) Sec. 83.

(m) Rules 13, 14 and 17, Sch. S.

(q) Sec. 117.

sec. 26 and sec. 76.

(r) Sec. 57.

(n) Sec. 32.

TRANSMISSIONS BY DEATH OR INSOLVENCY.

No estate in land now passes on intestacy or by will (*a*) excepting such devises as are made to the personal representative, other estates pass only on conveyance by the personal representative to the devisee. (*b*) The executor or administrator of a deceased proprietor of lands, under the new system, must now first cause himself to be registered as owner, on making the necessary proof before the District Registrar, who makes an entry of the particulars in the register, cancels the existing certificate of title and issues a fresh one describing the new registered owner in his representative capacity as executor or administrator as the case may be; (*c*) his title then relates back and takes effect as from the death of the deceased owner and he holds the estate or interests of which he is so registered as owner upon the trusts, if any, and for the purposes to which the same is applicable under the provisions of the Real Property Act, (*d*) and the laws in force relating to the distribution of the estates of deceased persons; but for the purpose of dealing with land under the new system he is deemed to hold them as absolute proprietor. (*e*) Where trust estates were held by a deceased owner jointly with other persons under the condition of "No Survivorship" the sanction of the Court is required before the register can be altered, (*f*) and when the personal representative is registered in the place of the deceased in such cases he holds subject to the same trusts and equities upon which the deceased held the same, but is deemed an absolute proprietor for the purpose of registrations under the new system while his name remains as owner on the Register. Upon cause shewn a

(*a*) Secs. 27, 29 and 113.

(*b*) Sec. 29.

(*c*) Sec. 113.

(*d*) Sec. 29.

(*e*) Sec. 117.

(*f*) Secs. 82, 83.

trustee may be removed and a new one registered as proprietor, on application to the Court. (*g*)

Mortgages, encumbrances and leases transmitted in consequence of the death of the deceased owner must have the particulars of the transmission noted upon them, and in such cases proofs are required to be produced to the District Registrar, and entries made upon the Register, Letters of Administration or Probate, noting the fact of the registration of the personal representative as owner in place of the deceased. (*h*)

The assignee or trustee of an insolvent proprietor is entitled to be registered as owner of the bankrupt's estates, and interests in lands under the new system, and to have a certificate of title issued to him; (*i*) he then holds as trustee for the creditors, and subject to the trusts, if any, on which the bankrupt proprietor held the lands, but for the purposes of registering dealings under the new system he has all the powers of an absolute owner. (*j*)

LEASES.

It is only the registered owner who can lease lands after the certificate of title has issued under the new system, and if at the time there is a subsisting mortgage or encumbrance, no lease can bind the mortgagee or encumbrancee unless he has consented to its registration. (*a*) Implied covenants bind the lessee to pay the rent and taxes, and to keep and yield up the premises in repair, accidental damage by fire, lightning, storms, and reasonable wear and tear excepted. (*b*) The implied powers enable the landlord to

(*g*) Sec. 117.

(*h*) Sec. 114.

(*i*) Sec. 115.

(*j*) Sec. 117.

(*a*) Sec. 87.

(*b*) Sec. 88.

enter and view the state of repair, and to re-take possession for breach of covenants. (c) Short forms of special covenants are provided, which when used are construed as if the words of the corresponding full form had been inserted, (d) and all covenants, whether express or implied, may be modified by the introduction of express exceptions. (e) Leasehold estates may be mortgaged or charged, (f) and they may also be transferred, (g) in which case, unless otherwise expressed, a covenant is implied that the transferee will observe the covenants and indemnify the transferor against liability in respect thereto. (h) The transferee becomes possessor of all the rights of the original lessee and subject to all liabilities to which he would have been bound had he been named in the original instrument as lessee. (i) A sub-lease does not appear to confer any right of registration (j) unless under some special circumstances an order might be obtained from the inspector, (k) and a sub-tenancy would have to depend upon an unregistered instrument and the possession of the sub-lessee; (l) who has also the right to protect his interests by caveat against dealings on the part of the original lessee. (m) Leaseholds may be transmitted by death or by insolvency, the personal representative or assignee being substituted as the registered owner, (n) with all his rights and obligations, (o) the old certificate being then cancelled and a new one issued. (p) When a lease expires by effluxion of time no entry in the register is necessary as evidence of its determination, but upon proof of lawful recovery of possession, (q)

(c) Sec. 89.

(d) Sec. 91.

(e) Secs. 91, 144.

(f) Sec. 96.

(g) Sec. 98.

(h) Sec. 80.

(i) Secs. 99, 145.

(j) Sec. 81.

(k) Sec. 77.

(l) Secs. 63, 65.

(m) Sec. 130.

(n) Sec. 114.

(o) Secs. 80, 117.

(p) Sec. 116.

(q) Sec. 90.

surrender, (r) or the refusal of an assignee to accept the lease, (s) the District Registrar is required to make proper entries which have the effect of causing the lease to determine. Such entry does not release the lessee from liability where the lessor has re-entered on account of breach of covenants, (t) nor does an entry of the assignee's refusal to accept a lease operate to the prejudice of actions commenced, or causes of action accrued in respect of any breach or non-observance of the covenants. (u) No surrender of a lease which has been mortgaged or charged (v) can be entered without the consent of the mortgagee or encumbrancee. (w)

EASEMENTS.

When easements over lands under the new system are created as annexed to, or to be used and enjoyed together with other lands also under the new system, entries are made on the certificates of title to all the lands affected. (a)

Land under the new system may be subject to easements by implication or through expropriation, (b) and easements may be acquired by user and enjoyment (c) in the same manner as over any other land.

MORTGAGES AND CHARGES.

Mortgages and encumbrances under the new system do not operate as conveyances of the estate, (a) but are

(r) Sec. 92.

(s) Secs. 93, 94.

(t) Sec. 90.

(u) Sec. 116.

(v) Sec. 96.

(w) Sec. 92.

(a) Sec. 79.

(b) Sec. 63.

(c) Sec. 65.

(a) Sec. 97.

hypothecs or real charges. The "mortgage" under the new system is intended to be a dealing similar to a mortgage under the general law to secure a loan, (*h*) except that it does not pass the legal estate charged or made security in favor of the mortgagee; (*c*) but the "encumbrance," although the expression includes any charge or lien, (*d*) is intended to charge lands for the payment of an annuity, rent charge or sum of money in favor of the encumbrancee; (*e*) and although thus essentially different in character, yet there is such similarity in their usual incidents and results that they may be with propriety considered together.

The implied powers and liabilities, as regulated solely by the Statute, are analogous, but in mortgages short forms of covenant adapted to the ordinary relations of mortgagor and mortgagee, may be used to express the full forms (*f*) which are inapplicable in the case of encumbrances. They may be transferred (*g*) by endorsement, (*h*) or by a separate instrument. A separate instrument (*i*) or the form of endorsement provided may be used for the transfer of part of a mortgage or encumbrance, (*j*) and the part so transferred may be given priority over the remainder, or made to rank equally or its payment may be deferred, according to agreement expressed in the transfer. The rights and powers as well as the obligations, of all parties are preserved upon the transfer of mortgages and charges, (*k*) and it operates only upon registration. (*l*)

All mortgaged certificates are impounded by the District Registrar who, if requested, furnishes a certified copy to

(*b*) Sec. 3 (4).

(*c*) Sec. 96, Sch. C.

(*d*) Sec. 3 (7).

(*e*) Sec. 96, Sch. D.

(*f*) Sec. 91, Sch. N.

(*g*) Sec. 98.

(*h*) Sch. G.

(*i*) Sch. F.

(*j*) Sch. H.

(*k*) Secs. 99, 145.

(*l*) Secs. 74, 99.

the owner to enable him to deal with his interest in the land, and the mortgagee for his security may in like manner obtain a Certificate of Charge shewing the priority of rank to which his claims are entitled. (*m*)

The discharge of mortgages or encumbrances, either wholly or partially, is effected by an entry in the register, which can be made only upon the production of the instrument with a duly signed endorsement, evidencing the discharge, or by a separate instrument of discharge, duly executed by the mortgagor, or annuitant, as the case may be. (*n*) When a mortgagee is absent, and there is no person in the Province authorized to receive money accruing due, payment may be made to the Provincial Treasurer, and his receipt will be sufficient to procure the entry of discharge, the money without interest being paid over by the Provincial Treasurer, to the person entitled to receive it. (*o*) An encumbrance may likewise be discharged on proof of payment of all arrears, and that the annuitant is dead, or that the annuity has ceased according to the terms of the instrument by which it was created. (*p*)

When estates or interests in lands are mortgaged or encumbered, they cannot be leased without the consent of the mortgagee or encumbrancee, (*q*) and no leasehold so affected can be surrendered without a similar consent. (*r*)

There is no provision for the registration of sub-mortgages, but a mortgage of a mortgage may be effected by a transfer, accompanied by an agreement as to the conditions of defeasance, converting it into a sub-mortgage, as between the transferor and transferee protected by caveat, (*s*) or perhaps filed by order of the inspector, (*t*) or deposited as a declaration of trust. (*u*)

(*m*) Sec. 109.

(*n*) Sec. 100.

(*o*) Sec. 101.

(*p*) Sec. 102.

(*q*) Sec. 87.

(*r*) Sec. 92.

(*s*) Sec. 130.

(*t*) Sec. 77.

(*u*) Sec. 86.

Equitable mortgages are recognized (*v*) by the Act, and may be effected by the mere deposit with a banker or creditor of the certificate, or other instrument evidencing title; the equitable mortgagee may, if he desires, obtain protection by filing a caveat, (*w*) which is the only means by which he can secure priority over lien holders and judgment creditors. (*x*)

On default being made under the terms of the mortgage or encumbrance, the mortgagee or encumbrancee, after the default has continued for one month, or such longer period as may be expressly limited, may give a written notice to perform the covenant, including if deemed proper a notice of his intention to apply for an order of foreclosure, of which notice a copy should be filed in the proper Land Titles Office. (*y*) Such notices should be given to the mortgagor, encumbrancer, and all other persons appearing to be interested in the lands, at the date when the notice is filed, and, unless otherwise expressly required by the conditions, set forth in the mortgage or encumbrance, he may forthwith enter and take the rents, issues and profits, (*z*) and after the default has continued for another month, he may sell the land, receive the purchase money and execute a transfer, (*a*) in the same way as power of sale may be exercised in cases under the general law, and upon registration of such transfer the land vests in the purchaser, who is entitled to a certificate of title free from such mortgage or encumbrance, or any mortgages or encumbrances registered subsequent thereto. (*b*)

The moneys realized by any such sale are applied, firstly, in payment of the expenses of the sale; secondly, in pay-

(*v*) Secs. 68 (4), (6), (7); 109, 122.

(*w*) Sec. 130.

(*x*) Sec. 74.

(*y*) Secs. 103, 106, 108, 131; Rule 23, Sch. S. sec. 26.

(*z*) Sec. 103.

(*a*) Sec. 104.

(*b*) Sec. 105.

ment of the money due the mortgagee or encumbrancee; thirdly, in payment of subsequent mortgages or encumbrances, if any, in the order of their priority, and the surplus, if any, is payable to the mortgagor or encumbrancer. (a)

Foreclosure may be obtained after notice to all interested parties in the case of mortgages under the new system where default has continued for six months and an attempted sale by public auction has proved abortive. (c) Upon application for foreclosure, notices may be required to be advertised offering the lands for sale, and the District Registrar then appoints a time, after which the foreclosure order may issue unless in the interval the land be sold or the moneys paid. The entry of the foreclosure order in the register vests the land in the mortgagee or his transferee, who has proceeded to foreclosure, free from all rights or equity of redemption of the mortgagor or any persons interested under instruments over which the foreclosed mortgage had priority, and a fresh certificate of title is issued accordingly. (d) The old certificate of title must be surrendered for cancellation (e) or its production dispensed with; (f) to avoid trouble in such cases mortgaged certificates are impounded in the Land Titles Office from the time of the registration of the mortgage or encumbrance for the use of all persons interested. (g)

POWERS OF ATTORNEY.

An attorney with power to sell lands may apply in the owner's name to have the title registered under the new system (a) and in the discretion of the District Registrar

(c) Rule 23, Sch. S. sec. 26, and (f) Sec. 68.

Sec. 106.

(g) Sec. 109.

(d) Sec. 107.

(a) Rules 2 and 5; Sch. S. sec. 26 and sec. 41.

(e) Rule 17, Sch. S., s. 26.

an agent may make an application on behalf of the owner. (b)

A form of power of attorney by a person who has been registered as owner is provided, which can be modified to suit circumstances, it must be entered in a special book for recording Powers of Attorney, and if the lands to be dealt with are specified an entry must also be made in the register. (c) A general form is also given, which can be made to apply to all lands under the new system, of which the principal may at any time, either before or after its date, become the registered owner. (d) Powers of attorney registered under the old system are made valid and available to the extent of the authorities given therein by the deposit of attested copies in the Land Titles Office. (e) Revocations of powers of attorney may be registered and notices given to the District Registrar of the death of the principal, which take effect only from the date of registration (f) as to instruments executed subsequently. Express authority would be required by the attorney to lease mortgaged lands. (g) All powers of attorney and revocations require attestation and should be verified by the subscribing witness. A power of attorney given for valuable consideration, or made irrevocable, should be protected by caveat. (h)

JURISDICTION OF THE COURT OF QUEEN'S BENCH.

The jurisdiction of competent Courts is in no manner affected or taken away in cases where there has been actual fraud, or over contracts respecting land, or over

(b) Sec. 40.

(c) Form K. s. 110.

(d) Form L. s. 111.

(e) Sec. 111.

(f) Secs. 74, 112.

(g) Sec. 87.

(h) Sec. 130.

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equitable interests in real estate ;(a) and a Judge in Chambers has authority to make orders and decrees respecting land, or in respect of matters or instruments relating thereto, and entries affecting lands ; but if a certificate of title is ordered to issue it must appear that the person to be registered as owner has a safeholding title. (b)

In matters of caveat special powers are given to the Court and Judges for the summary disposal of contested claims. (c) In matters relating to trusts the Court or a Judge has authority to make summary orders for the removal of trustees and assignees, and the appointment of other persons in their stead. (d) The Court of Queen's Bench may enforce a summons of the District Registrar ;(e) and a Judge of the Court of Queen's Bench in Chambers may by summons or warrant enforce the production and surrender of instruments (f) required by the District Registrar for alteration or cancellation ;(g) and may make orders respecting them, and for the commitment of persons refusing or neglecting to produce or surrender such instruments. (h)

A Judge in Chambers may on summons order the production of documents for inspection at the Land Titles Office ;(i) and in the hearing of any matter arising under the Real Property Act the Court or a Judge in Chambers may summon persons as witnesses or to be made parties to the cause, and in disposing of the matter may award costs. (j)

The Court or a Judge may give opinions on doubtful matters of law or fact, on reference from the District

(a) Sec. 129.

(b) Sec. 123.

(c) Sec. 130.

(d) Sec. 117.

(e) Sec. 68.

(f) Sec. 121.

(g) Sec. 68.

(h) Sec. 122.

(i) Sec. 124.

(j) Sec. 125.

Registrar; (k) and a Judge in Chambers has power to decide or make orders respecting uncertain or difficult matters of administration referred to him in a similar manner. (l)

Upon the hearing of any matter, all interested persons and the Attorney-General for Manitoba may appear and be heard by the Court or Judge. (m)

An appeal lies to a Judge in Chambers against any act or order of the District Registrar, and such order may thereupon be made as the circumstances may require as to the matter of the appeal and as to costs. (n) The same rules of procedure apply in actions and proceedings under the Act as are in force respecting actions and proceedings of a similar nature in the Court in which such action or proceeding may be tried or taken, but they are not rendered invalid by technical irregularities. (o) New rules, regulations and forms of proceedings may be made by the Court in regard to matters arising under the Act. (p) The fees on proceedings are such as are fixed by the Court, or payable on proceedings of a similar nature in Court. (q)

All decisions of a Judge or Court, whether on the first hearing or on an appeal, are subject to appeal in the same manner as other appeals are taken from such Court. (r) While any suit or proceeding in Court is pending a certificate of *lis pendens* may be filed in the Land Titles Office, (s) which, until discharged, prevents dealings which might prejudice the rights of the person claiming interest in the suit, but no *lis pendens* can be filed without the order of a Judge, after a caveat relating to the same matter has lapsed or been withdrawn or discharged. (t)

(k) Sec. 119.

(l) Sec. 120.

(m) Sec. 125.

(n) Sec. 118.

(o) Secs. 130 (12), 142.

(p) Sec. 127.

(q) Sec. 123.

(r) Sec. 126.

(s) Secs. 108, 131.

(t) Sec. 130 (14).

CAVEATS.

Caveats are notices to the District Registrar of rights claimed in land subject to the new system, and cautioning him and the public generally against dealings which might be to the prejudice of the claimant; they are analogous to *ex parte* interim injunctions in restraint of dealings with estates or interests in land.

Caveats may be lodged by order of the Court or a Judge, (a) or by the District Registrar, to protect the rights of the Crown or persons under legal disability, or for the purpose of preventing fraud or improper dealings. (b) Caveats of this description and those lodged by or on behalf of beneficiaries under a will or settlement, (c) are continuing caveats and do not lapse by mere effluxion of time, unless so stated in the order for its filing; (d) but must be disposed of by withdrawal or by order of the Court. (e) Every other caveat must state the names and additions of the person on whose behalf it is filed, and mention some place within Manitoba where notices and proceedings respecting it may be served; (f) it must be signed by the caveator, his attorney or agent, and supported by an affidavit or statutory declaration setting out the nature of the claim and the good faith of the claimant. (g) Caveats are entered in a special register and notice of the filing of the caveat is at once given to the applicant for registration or the registered owner as the case may be. (h) A caveat lodged before the title has been registered forbids such registration and suspends all investigation and proceedings in the Land Titles Office until it has

(a) Sec. 130 (13), (14), and Rule 11,
Sch. R.

(b) Secs. 68 (5), 86 and 117.

(c) Sec. 130 (5).

(d) Sec. 130 (14); Rule 23, Sch. S.,
s. 26.

(e) Sec. 130 (7) (13) (15).

(f) Rule 14, Sch. R., sec. 130.

(g) Sec. 130 (8), and Sch. Q., sec. 130.

(h) Sec. 130 (1) and (4); Rule 8,
Sch. S., sec. 26.

been withdrawn or lapses, or is discharged by the Court or a Judge in chambers, (*i*) it remains in force for one calendar month from the day it is filed, after which it lapses as a matter of course; (*j*) and upon an entry (*k*) to that effect it ceases to have any force unless within the month proceedings have been taken to establish the cavator's rights, and a copy of the petition (*l*) with proof of such proceedings have been filed in the Land Titles Office, (*m*) or an order obtained extending the time for such proceedings. (*n*)

A caveat lodged after the issue of a certificate of title prevents the registration of dealings so long as it remains in force, except subject to the claim of the caveator; (*o*) it lapses upon notice being given that the proprietor intends to register dealings, unless within fourteen days from the service of such notice on the caveator, he takes proceedings in the manner above mentioned, (*p*) or obtains an order restraining registrations which may be granted upon indemnity being given against any loss resulting from delay, (*q*) or upon such conditions as the Court or Judge may impose, (*r*) otherwise, upon an entry by the District Registrar, it ceases to have effect. (*s*) All caveats may be withdrawn (*t*) subject, in ordinary cases, to the payment of damages and costs incurred in consequence of its filing, (*u*) and in every case caveats may be discharged with or without costs by order of the Court or a Judge. (*v*)

After a caveat has lapsed or been withdrawn or discharged

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| (<i>i</i>) Sec. 130 (9), (11), (12). | (<i>q</i>) Sec. 130 (4) (5). |
| (<i>j</i>) Sec. 130 (2). | (<i>r</i>) Sec. 130 (16). |
| (<i>k</i>) Sec. 130 (7), (13). | (<i>s</i>) Sec. 130 (7) (13). |
| (<i>l</i>) Rules 1 and 2, Sch. R., sec. 130;
Rule 23, Sch. S., sec. 26. | (<i>t</i>) Sec. 130 (7) (9) (13). |
| (<i>m</i>) Sec. 130 (11). | (<i>u</i>) Sec. 130 (9) (10) and Rule 10,
Sch. R. |
| (<i>n</i>) Sec. 130 (16). | (<i>v</i>) Sec. 130 (12) (15) and Rules 5
10, 12, 13 Sch. R. |
| (<i>o</i>) Sec. 130 (") (6). | |
| (<i>p</i>) Sec. 130 (11) and Rules 1 and 2,
Sch. R.; Rule 23, Sch. S. sec. 26. | |

no *lis pendens* or caveat relating to the same matter can be filed, except by the District Registrar or by order of the Court or a Judge. (*w*)

The procedure in matters of caveat is summary, but orders have the effect of judgments of the Court and must be obeyed by the District Registrar; (*x*) like all other orders and decrees they are subject to appeal, (*y*) and if a certificate of title is ordered to issue it must appear that the person to be registered as owner has a safeholding title. (*z*)

RIGHTS OF CREDITORS AGAINST REGISTERED INTERESTS.

The plaintiff or any person interested in a suit affecting lands may file a certificate of *lis pendens*, which has the effect from the time of its filing of preventing registrations being made except subject to the rights or interest claimed in the suit. (*a*) After a caveat has lapsed or been withdrawn or discharged, a *lis pendens* under any proceeding in relation to the same matter cannot be filed without the authority of a Judge, (*b*) but the vacating of a certificate of *lis pendens* would not interfere with the subsequent filing of a caveat. Certificates of judgments, decrees or orders for the payment of money against a registered owner, both at common law and in equity, may be registered under the new system, and entered in the caveat book, and if they contain a specific description of lands, an entry is also made against them in the register. (*c*) From the time of registration they charge the lands of the judgment debtor, with a lien

(*w*) Sec. 130 (14); Sec. 131.

(*a*) Sec. 108, 131.

(*x*) Sec. 130 (7) (13) and Rules 8 and 12 Sch. R.

(*b*) Sec. 130 (14).

(*y*) Sec. 126.

(*c*) Rules 8 and 13, Sch S. sec. 26; secs. 74 and 76.

(*z*) Sec. 123.

which may be enforced by the Court; and mechanics' liens may be registered and enforced in a similar manner. (d) Beneficiaries may have summary relief by the removal of a trustee or assignee, (e) and generally all rights may be protected by caveat (f) and enforced by the Court.

REMEDIES FOR LOSS OF RIGHTS.

An Assurance Fund is formed by the payment of a fee of from one-tenth to one-fourth the value (a) of lands on the first registration of title under the new system, and upon each subsequent transmission by death or insolvency. (b) This fund is managed by the Provincial Government, (c) and is intended to assist (d) in the payment of damages, which may be recovered by any person sustaining loss or damage through any of the following causes: (e)

1. Omissions, mistakes or misfeasances of officers acting under the provisions of the Act applicable to the new system. (f)

2. Being deprived of an estate or interest in land through the bringing of the same under the new system, or the registration of some other person as owner.

3. Errors, omissions or misdescriptions in any certificate of title, or in any entry or memorial in the register, or in any certificate of charges.

4. Being by the provisions of the Act barred from bringing an action of ejectment or other action for the recovery of the land, estate or interest, or of damages.

(d) Sec. 63.

(e) Sec. 117.

(f) Secs. 68 (5), and 130.

(a) Sec. 71.

(b) Sec. 140.

(c) Sec. 141.

(d) Sec. 135 (a).

(e) Sec. 135.

(f) Sec. 135.

5. When the person liable for damages is dead or cannot be found within the Province. (*g*)

The plaintiff in any such action has to pay full costs of defence if non-suited; (*h*) and the action is subject to a limitation of six years, (*i*) with the usual proviso in cases of legal disability. No such action can be maintained in favor of any person who, after notice (*j*) or becoming aware of the application for the registration of title, neglected to file or proceed under a caveat.

The assurance fund is not liable for losses arising from the breach of any trust, (*k*) nor where the land has been included in more than one grant from the Crown, or where it has been included by misdescription in a wrong certificate of title, unless the person liable for damages is dead or has absconded. (*l*)

Any person deprived of land or of any estate or interest therein through fraud, or the registration of title under the new system, or the registration of another as owner, or through any error or misdescription in a certificate of title, or in any entry or memorial in the register, may recover damages in an action at law against the person through whose fraud, error, omission, misrepresentation, misdescription or wrongful act, the erroneous registration was made or title acquired to the land, estate or interest, of which he has been so deprived; (*m*) the bringing of such action does not prejudice his right of action against the District Registrar on fiat of the Attorney-General; (*n*) or against the assurance fund where the person liable for damages is dead or has absconded, or for such amount as the sheriff may be unable to recover on execution against the person

- (*g*) Sec. 134.
- (*h*) Sec. 136.
- (*i*) Sec. 137.
- (*j*) Sec. 52.

- (*k*) Sec. 139.
- (*l*) Secs. 64, 132, 133, 134, 139.
- (*m*) Secs. 64, 132.
- (*n*) Sec. 132.

so liable. (o) But he cannot recover damages unless such person has been guilty of fraud, misstatement or wrongful acts, nor is a *bona fide* purchaser or mortgagee liable to ejectment or damages on the ground of fraud or error upon the part of another person. (p)

The Provincial Treasurer may, by summary process, recover any amount paid out of the fund. (q)

The ordinary limitations apply to actions of ejectment.

The foregoing are the remedies shortly stated as specially provided by the statute, but the subject is one full of complication and difficulty, and these notes are therefore to be regarded as a mere outline of the proceedings likely to be adopted in the simplest cases only ; it must be constantly borne in mind that although the statute aims at giving the character of authenticity and incontestability to official instruments, memorials and entries, (r) yet the jurisdiction of competent courts has not been affected or taken away ; through them relief can always be obtained on the ground of fraud ; and they still have the same authority as heretofore in matters of contract for the sale or other disposition of lands, and over equitable interests therein ; (s) and all rights may still be bound by estoppel. (t)

THE TERRITORIAL ACT.

In the North West Territories the administration of the Act is controlled by the Government of Canada, and the provisions of the Territorial Act are, as a rule, similar to those of the Act which has been already discussed ; at

(o) Secs. 134, 139.

(p) Secs. 64, 67, 133.

(q) Sec. 138.

(r) Secs. 64, 66, 67, 74, 109, 133
and 147.

(s) Secs. 123, 129, 146.

(t) Secs. 52, 137.

least, the effect of their provisions so generally coincides as to leave but little room for separate comment.

As the Territorial Act is administered by the Dominion Government, who also hold all public lands in the Territories, the certificate of title is made to take the place of the Crown grant (*a*) in the case of lands alienated since the Act went into force on the first of January, 1887, (*b*) and the remedy for loss of an estate or interest would perhaps be restricted to that provided by the Dominion Lands Act, or in damages in an action prosecuted against such person as a Judge might appoint. (*c*)

Titles which are defective, or which are clouded or encumbered, or respecting which any matter arises requiring special investigation, must be referred to a Judge, (*d*) who is required to examine all titles submitted to him and has special powers of a nature similar to those given to the District Registrars in Manitoba, (*e*) and also the power to adjudicate upon adverse claims (*f*) after notice has been given by advertisement.

Executions may be registered to bind and affect lands in the Territories, (*g*) and all instruments must be executed, according to the forms given in the Act, in order to be effectual. (*h*)

Transfers may be executed in duplicate, when they are not made by endorsement. (*i*)

Mortgages or encumbrances may be discharged on proof of payment by order of a Judge, (*j*) and in case of absentees a discharge may be effected by the payment of the mort-

(*a*) T. sec. 44.

(*b*) T. sec. 2.

(*c*) T. sec. 104.

(*d*) T. secs. 47, 48.

(*e*) T. sec. 49.

(*f*) T. sec. 51.

(*g*) T. secs. 61 and 94-98.

(*h*) T. sec. 64.

(*i*) T. sec. 65.

(*j*) T. sec. 82.

gage money into a chartered bank upon the order of a Judge. (*k*)

The Land Assurance Fund is formed by the Minister of Finance and Receiver-General of Canada setting aside one-fifth of all fees received, (*l*) and a special commission varying from one-fifth to one-tenth of one per cent. is payable on the value of all property registered. (*m*)

The actual wording of some sections in the Territorial Act differs from that of the corresponding provision in the Manitoba Statute, but these are not of sufficient importance to call for special reference here; it may be assumed, as a general rule, that for every enactment in the Manitoba Statute, which is essential to the operation of what is therein termed the "New System," there is a parallel provision in the Territorial Act, and the foregoing analysis will be found to contain the principles laid down for the practical operation of the system of title registration in the North-West Territories, as well as in Manitoba.

(*k*) T. sec. 84.

(*m*) T. sec. 133.

(*l*) T. sec. 106.

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PART II.

THE REAL PROPERTY ACT

OF 1889.

PROVINCE OF MANITOBA,

WITH NOTES AND REFERENCES.



THE REAL PROPERTY ACT OF 1889;

BEING CHAPTER 16 OF THE STATUTES OF MANITOBA
PASSED IN THE 52ND YEAR OF HER MAJESTY'S
REIGN, WITH NOTES.

An Act respecting Real Property in the Province of Manitoba.

[Assented to 5th March, 1889.]

WHEREAS, it is expedient to amend and consolidate 48 Victoria, Preamble Chapter 28, and amendments thereto:

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, declares and enacts as follows:

SHORT TITLE.

1. This Act may be cited as "The Real Property Act of 1889." Short Title.

The Acts consolidated are 48 Vic. cap. 28, which came into force on 1st July, 1885; 49 Vic. cap. 28, which came into force on 28th May, 1886; 50 Vic. c. 11, which came into force on 10th June, 1887; and 51 Vic. caps. 21 and 22, which came into force on 18th May, 1888.

COMMENCEMENT.

2. This Act shall come into force immediately on being assented to. When in force.

(1) This Act shall be substituted for Chapter twenty-eight of Forty-eight Victoria, as applied to the present Land Titles Office at Winnipeg, except that the provisions of said Chapter twenty-eight constituting or affecting the said Land Titles Office at Winnipeg and its officers shall Application of Act.

remain in force until such office is abolished under Section eighteen hereof. The Registrar-General until such abolition shall exercise all the powers conferred by this Act on District Registrars.

This section, with sections 18 and 152, are the clauses of the Act, which effect the repeal from the 5th of March, 1889, of the former Acts of 1885, 1886, 1887 and 1888, but in the *Land Titles Office at Winnipeg*, being the official designation applied to the office established for the whole Province under the Act of 1885, the repeal of these Acts was suspended so long as it continued, and the Registrar-General and all the officers appointed under the repealed Acts were required to act under them until the office was abolished by order of the Lieutenant-Governor-in-Council; the provisions of the new Act are in nearly all cases identical with the Acts which have been consolidated, and the second clause of this section gave the Registrar-General authority to use any new powers conferred upon District Registrars as auxiliary to those conferred upon him under the old Acts so long as he continued in office.

See note to sec. 4.

INTERPRETATION.

Interpre-
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clauses.
"Land."

3. In this Act, and in all instruments purporting to be made or executed thereunder, unless the context otherwise requires:—

(1) The expressions "Land" and "Lands" shall extend to mean and include lands, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description, whatever the estate or interest therein may be, and whether legal or equitable, together with all paths, passages, ways, watercourses, liberties, privileges, easements, mines, minerals and quarries appertaining thereto, and all trees and timber thereon and thereunder lying or being, unless any such are specially excepted;

See note to sec. 40 *post*.

Easements in gross would not be included. *Ex parte Johnson* 5 W. W. and A. B. (L.) 55.

The meaning of "land" as defined here is more extensive than in the fourth section of the Victorian Transfer of Land

Statute, which is as follows: "The word 'land' shall include messuages, tenements and hereditaments, corporeal or incorporeal, and in every certificate of title, transfer and lease made under this Act such word shall also include all easements and appurtenances appertaining to the land therein described, or reputed to be part thereof or appurtenant thereto."

Under this section it was held that an easement appurtenant over land not under the statute could not be shewn on the certificate of title to the dominant tenement: *Ex parte Cunningham*, 3 V. L. R. (L.) 199. Nor could an easement appurtenant over land under the statute where the owner objected: *Ex parte Bissel*, 5 V. L. R. (L.) 53; although the contrary may be implied from the holding in *Jones v. Park*, 5 V. L. R. (L.) 167. It was queried in *Ex parte Cunningham*, *ubi supra*, whether an incorporeal hereditament could be the subject of a certificate of title.

The decision of the Supreme Court *Ex parte Bissel* has been ignored by the Office of Titles in Victoria for reasons referred to by the Commissioner of Titles (*vide a'Becket's Transfer of Land*, p. 76).

See also *post* secs. 59, 62, 63 and 84.

(2) The expression "owner" shall extend to, mean and include any "Owner" person or body corporate entitled to any freehold or other estate or interest in land, at law or in equity, in possession, in futurity or expectancy;

(3) The expression "Transfer" shall mean and include the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise; ^{fer."}

See note to sec. 74 *post*.

(4) The expression "Mortgage" shall mean and include any charge on "Mortgage." land created for securing a debt or loan;

(5) The expression "Mortgagee" shall mean and include the owner "Mortgagee." of a mortgage or the lender of money upon the security of any estate or interest in land;

"Mortgagor." (6) The expression "Mortgagor" shall mean and include the owner of land or of any estate or interest in land pledged as security for a debt ;

"Encumbrance." (7) The expression "Encumbrance" shall mean and include any charge or lien on land ;

It would include a mortgage or a lease where the context required.

"Encumbrancer." (8) The expression "Encumbrancer" shall mean and include the owner of any land or of any estate or interest in land subject to any encumbrance ;

"Encumbrancee." (9) The expression "Encumbrancee" shall mean and include the owner of an encumbrance ;

See note to sub-sec. (7) *ante*.

"Lunatic." (10) The expression "Lunatic" shall mean and include any person found by any competent tribunal or commission *de lunatico inquirendo* to be lunatic ;

Compare C. S. M. cap. 43, sec. 2.

"Person of unsound mind." (11) The expression "Person of unsound mind" shall mean and include any person not an infant, who, not having been found to be a lunatic, has been found on like enquiry, to be incapable, from infirmity of mind, of managing his own affairs ;

See note to preceding sub-section.

"Instrument." (12) The expression "Instrument" shall mean and include any plan or document in writing relating to the transfer or other dealing with land or evidencing title thereto, or a duplicate thereof ;

Under C. S. M. cap. 60, sec. 1, "plan" was not included in the meaning of the word "instrument."

"Memorial." (13) The expression "Memorial" shall mean and include a duplicate of any instrument as well as a memorial thereof ;

"Valuator." (14) The expression "Valuator" shall mean and include any person appointed by the Lieutenant-Governor-in-Council to value land under this Act ;

See sec. 71 *post*.

"Court." (15) The expression "Court" shall mean and include any Superior Court established in the Province of Manitoba ;

That is, "Her Majesty's Court of Queen's Bench for Manitoba." 48 Vic. cap. 15.

(16) The expression "Judge" shall mean and include the Chief "Judge." Justice and any judge of any Superior Court established in the Province of Manitoba;

See note to preceding section.

(17) The expression "Transmission," shall apply to change of owner-ship consequent upon lunacy, levy under execution, order of court or other act of law, or in virtue of any settlement, devise, or any legal succession in case of intestacy; "Transmission."

See note to sec. 63 *post*, as to *fi. fa.* and sec. 140 *post* as to duty chargeable on transmissions by will or intestacy or in bankruptcy.

Compare secs. 123, 129 *post* and C. S. M. cap. 43.

(18) The expression "Grant" shall mean and include any grant of "Grant." Crown land, whether direct from Her Majesty or pursuant to the provisions of any statute;

(19) Wherever the word "Patent" or "Crown patent" occurs in this Act the same shall include a memorial, exemplification or certified copy thereof from the Department of the Interior of Canada, or an official thereof, or of the Government of Canada, and such memorial, exemplification or certified copy purporting to be so given shall in all cases be accepted and be of the same effect as if the patent itself had been produced or deposited, and the production of such memorial, exemplification or certified copy shall be *prima facie* evidence of its execution. "Patent" "Crown patent."

Compare 49 Vic. cap. 35, sec. 21, as to certified copies of instruments which make proof in Court.

The latter part of this sub-section is declaratory as to what shall be evidence of a grant in proceedings under this Act, and would apply to proceedings in Court under any of its provisions as well as to making proof on the investigation of a title.

For the general provisions as to evidence of title refer to sec. 56.

See also secs. 37, 38 and 39 *post*.

"Indorsed." (20) The expression "Indorsed" shall mean and include anything written upon any instrument or other document or in the margin thereof, or at the foot thereof;

"Possession." (21) The expression "Possession" when applied to persons claiming title to land, signifies also alternatively the reception of the rents and the profits thereof;

Compare sees. 65-67 *post*.

Effect of describing a person. (22) The describing any person as proprietor, transferor, transferee, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor or lessee, or as trustee, or as seized of or having any estate, or interest in any land, shall be deemed to include the heirs, executors, administrators and assigns of such persons;

Compare with see. 86, which prohibits the entry of any notice of "trusts."

See also see. 28 and sees. 113-117.

Certificate to corporation to include successors. (23) Every certificate or other instrument issued to or made in favor of a corporation, aggregate or sole, shall be deemed to extend to and include the successors of such corporation;

"Old system." (24) The expression "Old System" shall mean the system of registration provided by Chapter Sixty of the Consolidated Statutes of Manitoba and amendments;

"New system." (25) The expression "New System" shall mean the system of registration provided by this Act;

Meaning and effect of words. (26) And generally, unless the contrary shall appear from the context, every word importing the singular number only shall extend to several persons or things, and every word importing the plural number shall apply to one person or thing, and every word importing the male sex only shall extend to a female, and shall include a body corporate, and whenever a form in the schedule hereto is directed to be used, such direction shall apply equally to any form to the like effect, or which for the same purpose may be authorized under the provisions of this Act, and any variation from such forms, not being a variation in matter or substance, shall not affect their validity or regularity, but they may be used with such alterations as the character of the parties or the circumstances of the case may render necessary.

The Schedules are printed following the sections in which they are referred to. See sec. 25 *post*.

See notes to sees. 77 and 144 *post* as to the use of forms.

This clause does not prevent the application of the general interpretation clause, C. S. M. cap. 1, sec. 7, to this Act or to instruments executed under it; *e.g.*, sub-clause 10 of the general interpretation clauses in the Consolidated Statutes has the words "and the converse," which are here (in sub-clause 26), omitted. By Rule of Practice No. 1 (Sch. S. sec. 26 *post*), the provisions of the above Act are made applicable to the construction of those rules so far as applicable, and they would also apply in all cases where they are not incompatible with this section.

LAND TITLES OFFICES—DISTRICT REGISTRARS.

1. The Lieutenant-Governor-in-Council may constitute such portions of the Province of Manitoba as may seem proper into Land Titles Districts. In each of such districts, at such place as the Lieutenant-Governor-in-Council may appoint, there shall be an office to be called The Land Titles Office for (*insert here the name of the district.*)

See sec. 19.

On 25th July, 1889, an Order-in-Council came into force constituting the County of Brandon a Land Titles District under this Act by the name of "The Land Titles District for Brandon," with an office in the city of Brandon to be called "The Land Titles Office for Brandon," and on 31st October, 1889, the municipality of North Cypress was added to the Brandon District.

On 1st August, 1889, an Order-in-Council came into force constituting "The Land Titles District for Portage La Prairie which, comprised on that date only the County of Portage La Prairie, but to which, on 15th August, 1889, the County of Westbourne was added—the office being at the town of Portage La Prairie and called "The Land Titles Office for Portage La Prairie.

Subsequent Orders-in-Council have provided :

1. That on and after the 9th day of October, 1889, the County of Beautiful Plains should be added to the Land Titles District for Portage La Prairie.

2. That on and after the 23rd day of October, 1889, the Counties of Minnedosa and Riding Mountain should be added to the Land Titles District for Portage La Prairie.

3. That on and after the 31st day of October, 1889, the County of Fairford and the municipalities of North Norfolk, Belcourt and Woodlands should be added to the Land Titles District for Portage La Prairie.

4. That on and after the 5th day of November, 1889, the County of Russell should be added to said Land Titles District for Portage La Prairie.

On 31st October the Land Titles Office for Winnipeg was constituted and the Land Titles District of Winnipeg erected composed of the County of Selkirk, the City of Winnipeg, and the municipalities of St. Francois Xavier, South Norfolk and South Cypress.

Another Order-in-Council will come into force on 14th January, 1890, establishing a Land Titles District, composed of the Counties of Dufferin and Rock Lake, with its office at Morden.

District,
Registrars.

5. For each of the said districts the Lieutenant-Governor-in-Council shall appoint an officer to be called the District-Registrar. No person shall be appointed a District-Registrar unless he is a barrister or attorney in the courts of the Province of Manitoba.

Other officers
to be
appointed.

6. The Lieutenant-Governor-in-Council may appoint such examiners of titles, clerks and other officers as may be deemed advisable for each district, and may also appoint one or more inspectors, who shall have such powers and duties under this Act as may be assigned to him or them by the Lieutenant-Governor-in-Council. All officers and other persons appointed under this Act shall hold office during the pleasure of the Lieutenant-Governor-in-Council.

Deputy
may be
appointed.

7. The Lieutenant-Governor-in-Council may appoint a person to act as the deputy of any officer appointed by or under this Act, and such deputy shall be entitled to act in that capacity during the absence or illness of such officer, or in case of the death of such officer, until a successor is appointed; and such deputy while so acting shall have all the powers of the officer for whom he may be acting. Provided that

the Deputy of any officer must have the qualifications provided for by this Act for such officer.

Compare sec. 15 *post*.

8. Every District-Registrar, before he enters upon the execution of his office, shall take the oath of office and give security to the satisfaction of the Lieutenant-Governor-in-Council, under the Act of this Legislature passed in the 46th and 47th years of Her Majesty's reign, chapter 7, and be subject to said Act.

See Amendments by 51 Vic. c. 9, and 52 Vic. c. 3, ss. 4, 5.

9. Each District-Registrar shall have a seal of office approved by the Lieutenant-Governor-in-Council.

See note to sec. 74 as to sealing of instruments being necessary to give them effective force.

10. The present Registrar-General or his successor appointed under the Real Property Act of 1885, shall, when so directed by the Lieutenant-Governor-in-Council, cause to be furnished to each of the District-Registrars, appointed under this Act, the original or copies of all registers or entries of any instruments in the present Land Titles Office at Winnipeg affecting any lands in the district of such District-Registrars respectively, of indexes of names, and of all other books and also of all the documents or instruments affecting the said lands which may be on file in said office, (a) and the District-Registrars shall keep the same in their respective offices, and deal with them as if they were made or registered under this Act. (b)

Registrar-General to supply D.R. with books, etc., or copies thereof

(a) See sec. 35, *post*.

(b) Lands registered under the Act of 1885 and amendments would, upon the formation of a new district, in which they were included, become subject to the provisions of this Act, although the certificate of title was issued under the Act of 1885.

See sec. 16 and notes *in pede*.

11. At such times and in such manner as the Lieutenant-Governor-in-Council may direct, all books, records, documents, plans and other papers now in the possession of Registrars appointed under the provisions of Chapter sixty of the Consolidated Statutes of Manitoba for the registration divisions included in each of the said districts constituted under the provisions of Section four of this Act, shall be transferred from the

Transfer of books, etc., from Registry offices to Land Titles offices.

possession of such Registrars and from the Registry Offices in which they are now deposited to the building erected or provided for the Land Titles Office for such district.

H. B. Co.
Land Reg-
ister, plans
and sur-
veys.

12. The copy of the Plans of Survey of the Hudson's Bay Company, and the copy of the Register Book of the Hudson's Bay Company, referred to in "The Hudson's Bay Company Land Register Act," shall remain for safe keeping in the Land Titles Office, at Winnipeg, and shall hereafter be under the charge and control of the District-Registrar, as part of the official books and instruments of the Land Titles Office at Winnipeg.

The copy of plans of survey, if ever made under the Hudson Bay Co. Land Register Act, have been apparently mislaid and no properly authenticated copy appears to have ever been on file in the registry offices for Winnipeg or for the County of Selkirk as provided by the Act. The Hudson Bay Co. survey extended from Lake Winnipeg up the Red River from St. Peters, on the east side to lot 208, and on the west side to lot 53 of the parish of St. Norbert, both inclusively; and westward along the Assiniboine from its junction with the Red to near the western limit of the parish of St. Francois Xavier.

The holdings were surveyed in narrow strips having usually a frontage on the rivers and a depth of about two miles.

The copy of the register is on file in the Land Titles Office at Winnipeg. It purports to be a register of lands allotted, sold or leased by the Hudson Bay Co. on both sides of the Red River from Lake Winnipeg southwards to about lots 53 and 208, as shewn on Plans of the Dominion Government Survey of the Parish of St. Norbert, and on both sides of the Assiniboine River from its confluence with the Red to the western limit of the Parish of St. Francois Xavier.

The following extract from an official report to the Department of the Interior by the late Chief Justice Wood on a case submitted to him under the Dominion Land's

Act, may prove interesting and of some use in determining the value, as evidence, of entries in the Hudson Bay Co. Register:—

“The first objection to the claim of L. is that the sale and transfer by A. V. to B. L. is not evidenced by writing under the hand of A. V., and the transaction is therefore void, and voidable especially as against the vendor and assignee in good faith and without notice.”

“To this I answer that in law the sale and transfer, though verbal, is good to pass the title of A. V. to B. L. in the lands, for it was accompanied by a change of possession, and of the position of the parties in respect of the lands to such an extent that equity would intervene and declare the contract though verbal, valid and binding, and would order its specific performance; and what may be done equity looks upon as having been done, and under the first and rational principle lying at the foundation of this procedure, I think in the present case I must look upon the verbal contract between A. V. and B. L. as completely executed and that the estate and interest of V. in the lands passed to L. as fully as if a formal deed had been executed between the parties.”

“The second objection is that no entry of this sale or transfer was made in the Land Register of the Hudson Bay Co. under the number of this lot, in that Register 538; but that according to that Register A. V., at the time G. bought and took a transfer of the one chain in width part of lot 538, stood in the Register as the owner of the lot, and therefore, giving the proper effect to the entries in the Register, A. V. must be considered as at that time owning the lot, as having a disposing power over the same, especially in so far as purchasers in good faith and without notice are concerned.”

“This entire proposition is a mistake in all its parts. The Register of the Hudson Bay Co. may be valuable as a source

of evidence relating to the transactions in respect of lands in the Red River settlement, but it cannot be relied on as giving a claim of title to lands, much less as declaring who at any given time was the true owner of any lands. If it were assumed to have such force and effect, no man's lands in the Red River settlement would be safe. As to tracing ownership in connection with the history of actual possession it may be, and sometimes is of service, but the entries were so irregularly made, and with such brevity, and in such general terms, and so frequently omitted to be made altogether, that it is not over-stating the fact when I say that, as containing a connected history of the changes and transfer of land, it is wholly unreliable, and to give it any such effect or construction would work disastrous consequences to land owners in the Red River Settlement, and would prove a 'snare and a delusion.' Fortunately the Legislature has never given to that Register the effect and potency contended for in the foregoing objection, and in my judgment it would be a great mistake for it ever to do so, and until the Legislature imposes upon me that necessity, I shall not put such a construction upon the Land Register of the Hudson Bay Co."

"In the present case the Register shews P. V., a witness in this investigation, and brother to A. V., to be the first or original owner, a grantee of the H. B. Co., of lot 538, the same as lot 117 (St. Norbert), and A. V. as his assignee or grantee (see Ex. D.) Whether or not there were intermediate owners between the brothers, I know not, the form of expression in the evidence of P. V. is open to suspicion that there were intermediate owners; however, as that fact was and is immaterial in the present case, it is of no consequence, as both parties claim under A. V., who, for the purposes of this investigation, must be considered as having been the true owner, at least at the time he made the sale and transfer to B. L., and gave him possession in 1868,

whoever may have been the prior owners, and the evidence of P. V., not the Register, is conclusive of this fact."

"The misconception of the effect of entries in the Register as to priority of estate of assignees, and grantees and bargainees of lands, was probably the ground of G. taking the conveyance he did of the one chain in question, for he must be assumed to have had notice of the claim of B. L., who was at the time and long prior thereto in actual possession and occupancy—living and dwelling with his family in the house and on the premises, which was an ever-speaking notice to all the world, and *prima facie* declaration that he was the owner of the lands, but who, notwithstanding this notice given by actual possession, took a conveyance from a person out of possession, relying no doubt upon the effect of the register of the H. B. Co. as securing him in the transaction. It has no such effect. Mr. G. must be taken to have purchased with notice of the estate and interest of B. L., who was in actual possession of the lands at the time of purchase, and such possession without actual notice, or even actual notice of possession, is in law held to be good and effectual notice (*Holmes & Benny*, 8 DeG. M. & G. 580). The same result would be reached were we to apply the well known maxim *Qui prior est tempore, potior est jure*."

"B. L.'s purchase and transfer, which, though by verbal contract was made effectual by his executing the same and going into actual possession and occupancy, was, in point of time, prior to that of G.; and, assuming that G. bought in good faith and without actual notice, constructive notice he certainly had, which in such a case as this is as effective as actual notice, and that the equities of the parties were equal, still the title of B. L. must prevail over that of G., for it is prior in point of time."

As to the manner in which these entries were usually made and the object for which the Register was designed see *McKenny v. Spence*, Man. Rep. Temp. Wood, 11.

Buildings. **13.** In each of said Districts, at the place appointed as provided in section four hereof, the Lieutenant-Governor-in-Council may procure a site and cause a suitable fire-proof building to be erected thereon or may purchase or rent a building to be used as the Land Titles Office, and properly furnish the same. The money necessary to be expended in the purchase of sites and the erection and furnishing of such buildings shall be provided out of the Consolidated Revenue Fund, but the same shall be repaid by the municipalities included in such districts respectively to the Government, in ten equal annual instalments. Interest at the rate of five per centum per annum on all unpaid principal, to be calculated from a date after the completion of such building to be fixed by the Lieutenant-Governor-in-Council, shall be paid with each instalment. The proportion to be paid by each of such municipalities shall be determined by the Municipal Commissioner in the same manner that other taxes levied by the said Commissioner are determined. The Municipal Commissioner shall levy upon municipalities a rate sufficient to meet the payments required by this section, or to meet the rent if a building is rented.

When
County
Registrars
to cease to
act.

14. On and after the date named in the Order-in-Council provided for in section four hereof, all Registrars appointed under the provisions of said Chapter sixty, or acting under the provisions of said chapter for counties or other divisions, included in any such Land Titles District so constituted, and all deputies thereof, shall cease to act as such and thereafter shall be relieved from all their duties under said Act, and such office shall from and after the date so named be abolished, provided that nothing in this Act contained shall have the effect of relieving any such registrar or his sureties from liability for acts done up to such date.

The offices so far abolished are the Registry Office for the County of Brandon, from 25th July, 1889, the Registry Office for the County of Portage La Prairie, from 1st August, 1889, and the Westbourne Registry office, from 15th August, 1889; Beautiful Plains County Registry Office, from 9th October; Minnedosa and Riding Mountain United County office, from 23rd October, the Marquette, Selkirk, Winnipeg and Norfolk offices from 30th October, 1889, and the Russell office on 5th November, 1889. The Registry Offices for the County of Dufferin and Rock Lake will cease to exist on 14th January 1890.

Subse-
quent
registra-
tions, how
made.

15. On and after the said date so named, all registrations under the provisions of said Chapter sixty shall be made with the District-Registrar

at the said Lands Titles Office for each district, and the said District-Registrar shall have all the powers and duties of a Registrar as provided by said Chapter sixty and amendments. A Deputy of the District-Registrar may be appointed by the Lieutenant-Governor-in-Council to act as Deputy-Registrar under said chapter sixty without the qualifications provided by this Act for a District-Registrar.

Deputy
Registrar.

See sec. 7, *ante*.

16. All such books, records, documents, plans and other papers and all registrations made in the said registry office prior to such date so named, shall continue to have the same effect on and after the said date so named, as if this Act had not been passed.

Continua-
tion of
books, re-
cords, etc.

The intention and meaning of this section appears to be that no restriction should be placed upon the effect of registrations and rights thereby acquired under the law as it existed at the time the instruments were placed on record. The effect of general liens or charges secured under former registrations in the county offices has not been enlarged or augmented through the transference of several divisions or parts of divisions heretofore constituted under the Lands Registration Act of Manitoba, to the same Land Titles District under the new system. The effect of registration under the old system does not extend to lands subject to the provisions of the former Real Property Acts, notwithstanding the repeal of the restraining clauses without consolidation and re-enactment in the present statute (*vide* 46 and 47 Vic. cap. 48, sec. 3. Note the word "*unrepealed*" in the last line but one of this section, is evidently intended to be "*repealed*"). Section 152 *post* provides for the validity of acts done and the enforcement of rights acquired and liabilities incurred under the repealed statutes. Rights once acquired have not been taken away by this repeal, neither have they been thereby augmented (*Hitchcock v. Way*, 6 A. and E. 947; *Butcher v. Henderson*, L. R. 3 Q. B. 335; *Restall v. London, etc.*, L. R. 3 Ex. 141).

For similar reasons liens or charges could not affect such lands, which were only bound by registration as provided by the statutes which have been repealed.

Quære the effect of registration of, say, a certificate of judgment, during the investigation under an application.

District Registrars to act as Registrars.

17. Except as herein otherwise provided the said District-Registrars shall continue to act as registrars under said chapter sixty and amendments, and shall carry out the provisions of said chapter sixty and amendments.

Under this section the District Registrar has succeeded to the office of the "*Registrar*," who merely ceased to act under sec. 14 *ante*, but whose duties are still to be performed under the dual system of registration prevailing in the Land Titles Office for the district in which the abolished registration division may have been situated.

Quære whether he should use the official seals of the old Registry offices, when authenticating official instruments under the Lands Registration Act of Manitoba.

Officers under R. P. A., 1885.

18. The Registrar-General and all other officers appointed under the provisions of the Real Property Act of 1885 and amendments, shall continue to act under said Act until a date to be named in an order-in-council, including the City of Winnipeg, passed under section four hereof, but on and after such date so named such Registrar-General and other officers so appointed shall cease all their functions and such offices shall, on and after said date so named be abolished.

See note to sec. 2.

The Registrar General and other officers as well as the Land Titles Office, under the Act of 1885 were abolished on 30th October, 1889. See note to sec. 4.

Commencement of new system.

19. The said District-Registrars, Clerks and officers shall commence their respective duties on the day named in the Orders-in-Council respectively, passed under the provisions of section four hereof.

See note to sec. 4.

Dis. R., etc., not to act as agent, conveyancer, attorney, etc.

20. No District-Registrar, Examiner of Titles, Officer or Clerk in any office under this Act shall, directly or indirectly, act as the agent of any corporation, society, company, person or persons investing money, and taking securities on real estate within his registration division; nor shall such District-Registrar, Examiner of Titles, Officer or Clerk, advise, for

any fee or reward, or otherwise, upon titles to land, or practice as a conveyancer, nor shall he carry on or transact within the office, any business or occupation whatever other than his duties under this Act; nor shall such District-Registrar, Examiner of Titles, Officer or Clerk, practice as a barrister, attorney or solicitor, upon pain of dismissal from office for any offence against this clause.

21. All fees for services under this Act or in connection with it other Fees than for such services as relate solely to the old system of registration and in no way relate to the new system, or the bringing of land under the new system, shall be settled by tariff made by the Lieutenant-Governor-in-Council, and no service shall be rendered by an official of a Land Titles Office until all such fees fixed by tariff for such service and fixed by this Act have been paid to the District-Registrar.

The following is the tariff of fees at present in force in the Land Titles Offices under the new system:

TARIFF OF FEES.

MANITOBA LAND TITLES OFFICES.

For each application when the applicant is the original grantee, and no transaction affecting the land, excepting mortgages or leases, has been registered	\$1 00
The like when the title is of any other description, and the value exceeds \$3,000.....	15 00
The like when the value exceeds \$2,000, and does not exceed \$3,000	10 00
The like when the value exceeds \$1,500, and does not exceed \$2,000	7 00
The like when the value exceeds \$1,000, and does not exceed \$1,500	5 00
The like when the value exceeds \$500, and does not exceed \$1,000..	3 00
The like when the value does not exceed \$500.....	2 00
For every Certificate of Title issued under an application to bring lands under the Act, which application shall only comprise lands in the same registration division, and shall not, except as hereinafter provided, comprise more than one Crown Section or other sub-division, contiguous country lands not exceeding altogether 2,000 acres—a road not to be considered a break in the contiguity—and any number of lots under the same plan of sub-division may be included in the same application, but in no case shall a Certificate of Title issue for more than fifty lots, according to any plan of subdivision. If the value of the land comprised therein does not exceed \$500....	1 00
The like if the value of the land exceeds \$500, but does not exceed \$1,000	1 50

TARIFF OF FEES.

The like if the value of the land exceeds \$1,000, but does not exceed \$2,000	\$2 00
The like if the value of the land exceeds \$2,000, but does not exceed \$3,000	3 00
The like if the value of the land exceeds \$3,000	4 00
For every Certificate of title not otherwise provided for	1 50
For registering a transfer or a discharge of mortgage, or charge, wholly or partially, or a satisfaction of an annuity, or a surrender of a lease	1 00
For registering a lease, mortgage or charge, or a transfer thereof	2 00
When any instrument purports to deal with or affects land in more than one grant or certificate, for each memorial after the first	0 50
For registering proprietor of any freehold estate or interest on a transmission	4 00
For every caveat	2 00
For every power of attorney	2 00
For every entry in the register, for which no other fee is provided	7 50
For withdrawal of caveat	1 00
For entry of foreclosure	4 00
For every search	0 25
For every general search	1 00
For every map deposited	1 00
For depositing document declaratory of trusts	2 00
For registering recovery of possession by legal proceedings, or registering the lessor as surrenderee	2 00
For vesting of lease in mortgagee on refusal of assignee to accept the same	2 00
For entering notice of marriage or death	2 00
For entering notice of writ of <i>fi. fa.</i> , or any order or decree of Court or of the Registrar-General, or filing certificate of judgment, mechanics' lien or <i>lis pendens</i>	1 00
For entering satisfaction of any such writ or other document	0 50
For order dispensing with production of any duplicate grant, certificate or instrument	1 00
For returning documents of title deposited in support of application, on withdrawal of application, or rejection of title	1 00
For order for, and inspection of, any documents permanently retained	1 00

TARIFF OF FEES.

59

not exceed		For copy of, or extract from, any document deposited in support	
..... \$2 00		of an application to bring land under the Act and retained, or	
not exceed		from any caveat (per folio of 100 words)	\$ 0 10
..... 3 00		For any certified copy—First folio of 100 words	1 00
..... 4 00		For every folio or part of folio after the first.....	0 10
..... 1 50		For every map thereon.....	0 50
or charge,		For taking affidavit or statutory declaration ...	0 20
or a sur-		For a special commission.....	3 00
..... 1 00		For every summons	0 50
er thereof	2 00	For every examination thereon per hour.....	2 00
d in more		For entry of an executor, or administrator, or the curator or the	
r the first	0 50	assignee of an insolvent, as a transferee or proprietor.....	2 00
rest on a		For entry of husband as joint proprietor.....	2 00
..... 4 00		For entry of survivors or other persons as proprietors in cases of	
..... 2 00		joint proprietorship	2 00
..... 2 00		For certificate to Court.....	2 00
provided	0 50	For special case—first folio.....	1 00
..... 1 00		Each additional folio.....	0 10
..... 4 00		For examination of instruments produced in support of an appli-	
..... 0 25		cation to bring lands under the Act—for each instrument in	
..... 1 00		excess of ten.....	0 20
..... 1 00		For each order for substitutional service.....	1 00
..... 2 00		For each direction or request to issue a certificate to any person	
lings, or		other than the applicant	1 00
..... 2 00		For each withdrawal of lands applied to be brought under the Act	1 00
o accept		For each certificate of withdrawal or rejection of application	1 00
..... 2 00		For each entry of discharge or lapse of caveat	0 05
..... 2 00		For each appointment of guardian <i>ad litem</i>	1 00
of Court		For each filing of petition on caveat.....	1 00
dgment,		For each filing of evidence of proceedings on caveat.....	1 00
..... 1 00		For each application for foreclosure—	
ent 0 50		If land valued not exceeding \$500	1 00
t, certi-		If land valued exceed \$500, but not \$1,000	3 00
..... 1 00		If land valued exceed \$1,000, but not \$2,000	4 00
applica-		If land valued exceed \$2,000, but not \$3,000	5 00
..... 1 00		If land valued exceed \$3,000, but not \$5,000.....	8 00
anently		If land valued exceed \$5,000	12 00
..... 1 00		For each filing of proceeding, on power of sale	2 00

TARIFF OF FEES.

A CONSOLIDATED TABLE OF FEES ON APPLICATIONS FOR REGISTRATION OF TITLE ACCORDING TO THE MANITOBA TARIFF.

VALUE.	FEES. Original Grantee.	FEES. Not Orig. Grantee.	VALUE.	FEES. Original Grantee.	FEES. Not Orig. Grantee.
\$100	\$2.10.....	\$3.25	1600	\$4.60.....	\$13.00
200	2.20.....	3.50	1700	4.70.....	13.25
300	2.30.....	3.75	1800	4.80.....	13.50
400	2.40.....	4.00	1900	4.90.....	13.75
500	2.50.....	4.25	2000	5.00.....	14.00
600	3.10.....	6.00	2100	6.10.....	18.25
700	3.20.....	6.25	2200	6.20.....	18.50
800	3.30.....	6.50	2300	6.30.....	18.75
900	3.40.....	6.75	2400	6.40.....	19.00
1000	3.50.....	7.00	2500	6.50.....	19.25
1100	4.10.....	9.75	2600	6.60.....	19.50
1200	4.20.....	10.00	2700	6.70.....	19.75
1300	4.30.....	10.25	2800	6.80.....	20.00
1400	4.40.....	10.50	2900	6.90.....	20.25
1500	4.50.....	10.75	On each addnl. \$100 add 10c..... add 25c.		

The total fees on each Mortgage are \$2, and on each transfer, \$2.50. Several parcels may be included in one transfer, but if more than one new certificate of title is necessary, \$1.50 is charged for each extra certificate.

Extra memorials at 50c. each are charged where extra entries are required to be made in the register upon the registration of mortgagees or transfers affecting lands in separate certificates.

The Registration Fees under the old system, where not specially provided for in the Statutes, are as follows :

TARIFF OF FEES EXIGIBLE UNDER THE LANDS REGISTRATION ACT OF MANITOBA.

For registering every instrument not otherwise specially provided for, not exceeding 800 words, and not including more than 10 lots or distinct parcels of land.....	\$2 00
For every additional 100 words or fractional part thereof.....	15
For each additional lot over 10 and up to 100	05
For each lot over 100	02

When the lands in any instrument are situated in different municipalities in the same County, the entry of such instrument for each distinct municipality to be considered a distinct resignation.

The registration of deeds of right of way, etc., to railway companies is usually provided for in the Company's charter, and is generally fixed at one dollar, including certificates.

For each certificate of discharge or partial discharge of mortgage, and every other certificate, including <i>lis pendens</i> , when there are only 10 lots or distinct parcels of land mentioned or described, not exceeding 250 words.....	\$1 00
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TARIFF OF FEES.

61

REGISTRATION OF

	FEES.
Original	Not Orig.
Doc.	Grantee.
0	\$13.00
0	13.25
0	13.50
0	13.75
0	14.00
0	14.25
0	14.50
0	14.75
0	15.00
0	15.25
0	15.50
0	15.75
0	16.00
0	16.25
100	add 25c.

transfer, \$2.50.
more than one
for each extra

extra entries are
n of mortgagees

n, where not
ollows :

REGISTRATION ACT OF

provided
ore than

.....	\$2 00
.....	15
.....	05
.....	02

ferent municipi-
nent for each
n.

ay companies
generally fixed

ortgage,
n there
or des-

.... \$1 00

For each additional 100 words or fractional parts thereof.....	\$0 15
For each additional lot.....	02
For registration of any original plan where the number of lots does not exceed 100	10 00
For each additional lot.....	02
For registration of any amended plan when the number of lots does not exceed 50.....	5 00
For each additional lot.....	02
For registration of any subdivision of lot or lots on any original plan or amendment thereof, where the number of lots does not exceed 10	2 00
For each additional lot.....	05
For registration of each certified copy of resolution for issuing debentures	1 00
For registration of each certified copy of by-law.....	2 00
For registration of return as in Schedule A. of Act respecting registration of debentures.....	50
For registration of name of holder or transferee of debentures not exceeding 5.....	50
Over 5 and not exceeding 15.....	75
Over 15 and not exceeding 30.....	1 00
Upwards of 30.....	1 50
For registration of certificate of naturalization	50
For registration of certificate of Judgment from County Court ..	50
For filing grants from the Crown	50
For filing each mechanic's lien	50
For filing each discharge of lien	50
For filing and recording every certificate of partnership	1 00

SEARCHES AND ABSTRACTS.

For every search on any lot of land as patented, or as afterwards subdivided on a registered plan, not exceeding four references	25
For every additional four references.....	25
Not to exceed on any particular lot and for a general search..	2 00
For exhibiting in the office each original registered instrument, including search for same	20
For search for every certificate of naturalization and certified copy thereof	25
For search of copy of by-law or resolution filed under Registra- tion of Debentures Act.....	50
For every abstract of title—for the first 100 words	50
For every 100 words additional, or fraction thereof.....	25
And see proviso in Act as to any section or portion of a section owned by and registered in the name of one and the same person.	

The meaning of the term "standard time" as used here would be, perhaps interpreted as the correct mean solar time of the locality where the office is situated; the offices throughout the Province open and close by what is known as railroad time or "central standard time."

93. The schedules to this Act and all additions and amendments thereto hereafter made by the Lieutenant Governor in Council, shall be deemed to be embodied in and to form a part of this Act.

The Schedules are printed following the sections in which they are referred to. See sec. 8 (26) *ante*.

94. The Lieutenant Governor in Council shall have power from time to time to alter any of the forms in the schedules to this Act, to provide any additional forms that may be deemed necessary, and to alter the rules and regulations set forth in schedules R and S to this Act, and to make such rules and regulations as may be deemed necessary or expedient for giving effect to this Act in cases unprovided for, according to its true intent and purpose.

See secs. 93 and 95 *ante*. Schedule R, follows sec. 130 *post*.

SCHEDULE B

RULES OF PRACTICE FOR LAND TITLE OFFICES.

1. So far as applicable the provisions of the seventh section of the Interpretation Act of Manitoba, and of the third section of this Act, and of the various sub-sections of the said sections shall be applied to the construction of these rules.

See notes to sec. 8 *ante*.

2. Every application for first registration under the new system shall be in writing, in the prescribed form, and the statements made in the application shall be verified by the affidavit of the applicant or the person acting in his name or on his behalf; but such affidavit may, in the discretion of the District Registrar, be dispensed with, or may be made by some other person instead of the applicant, or partly by one person and partly by another, at the discretion of the District Registrar, and in such case the affidavit or affirmation shall be modified accordingly.

See secs. 40, 47 and 57 and notes thereto *post*.

3. The applicant shall furnish the following evidence:

(1) All deeds in his possession affecting the land in question.

Evidence to be furnished by applicant

(2) Proof of facts necessary or required by the District-Registrar to make out a good safe holding title.

See secs. 44 and 47, and notes thereto, *post*.

Where direction, application must be attested.

4. Where in the application for first registration there is a request or direction that the certificate of title should issue in the name of some person other than the applicant, the application shall be duly attested and verified by the subscribing witness.

See sec. 45 *post*.

AFFIDAVIT BY WITNESS UNDER RULE OF PRACTICE No. 4 AND SEC. 45, WHERE CERTIFICATE OF TITLE IS TO ISSUE TO A PERSON OTHER THAN APPLICANT.

MANITOBA, I,
COUNTY OF } of the of
To Wit: } in the County of
make oath and say :

1. That I was personally present, and did see the within Application duly signed, sealed and executed by the part thereto.
2. That the said Application was executed at
3. That I know the said part
4. That I am a subscribing witness to the Application.

Sworn before me at
in the County of
this day of
in the year of our Lord 18

A Commissioner for taking Affidavits in B.R., etc.

What application to state.

5. Every application should state the names, residence and the profession, trade or occupation of the applicant, the estate claimed and description of the lands; it should also state the value of the lands, all documents or evidence of title in the possession or control of the applicant and all mortgages or encumbrances affecting the lands, the names and addition of all occupants of the land and of the lands contiguous thereto, and, except in the case provided for by statute, should be signed by the applicant or his duly constituted attorney, before the District-Registrar, a Notary Public, a Justice of the Peace, or a Commissioner for receiving affidavits in B.R., if executed within Manitoba, or if executed abroad, before a Judge of a Court of Record, a Notary Public under his official seal, or a Commissioner for receiving affidavits to be used in Manitoba. A Schedule should be annexed containing a list of documents referred

How to be signed and before whom.

to, each instrument being numbered and its nature, date and parties thereto stated.

See secs. 40 and 41 and 57 *post*.

6. Applications shall not, except as hereinafter provided, comprise more than one Crown section or lots comprised in more than one plan. Contiguous country lands, not exceeding altogether 2,000 acres, a road not to be considered a break in the contiguity, and any number of lots under the same plan of sub-division may be included in the same application, but in no case shall a certificate of title issue for more than fifty lots.

See Land Titles Tariff, 8th item, sec. 21, *supra*.

7. Where lands applied to be brought under the operation of the new system are claimed by the applicant as or through the heir or devisee of a person deceased, the applicant shall produce letters of administration or copy of probate with his evidence of title.

8. The "Caveat Book" shall be hereafter known as the "Caveat Book and General Register," and in it shall be entered certificates of judgment and attachments which may be filed in the Land Titles Office, as well as caveats and mechanics' liens.

See secs. 63 (e), 130 and 131.

9. The District-Registrar shall keep a book or books, to be called "The Register," and shall bind up therein duplicates of all certificates of titles to be issued as hereinafter provided for; and each certificate of title shall constitute a separate folium of such book, and the District-Registrar shall record therein the particulars of all instruments, dealings and other matters by this Act required to be registered or entered in the Register and affecting the land included under each certificate of title.

Compare secs. 44, 58, 60, 68 (7), 74 and 130 (7) *post*, and Rules 10, 13, 14, 16 and 18 *post*.

10. The District-Registrar shall also keep a book or books to be called "The Day Book," in which shall be entered, by a short description, every instrument which is registered with the day, hour and minute of filing; and for the purpose of priority between mortgagees, transferees and others, the time of filing shall be taken as the time of registration. The District-Registrar in entering memorials upon the certificates of titles embodied in the Register, and endorsing a memorial upon an

instrument to be issued, shall take the time from the Day Book as the time of registration.

See secs. 74, 76 and 78.

Plans.

11. The District-Registrar shall keep a plan book, and all reference to plans shall be made by plan number and not by registration number.

See Secs. 68 (8), 69 and 70.

Duplicate of plan.

12. At the time of the deposit of any plan of subdivision of lands as a town plot, a duplicate of such plan, signed and certified in the same manner as the original is required to be signed and certified, shall be deposited therewith, and such duplicate plan so deposited shall be kept for use of the public making searches and for reference in the Land Titles Office.

See Schedule T, sec. 69.

Memorial of charge to be endorsed on certificate.

13. The District-Registrar shall endorse upon the certificate of title a memorial of every mortgage, encumbrance, lease, rent charge, term of years, or other dealing affecting the land, and such memorial shall be endorsed upon the duplicate in the possession of the owner, if any, as well as upon the duplicate which is in the Register.

See Sec. 76.

What memorial in Register to state.

14. Every memorial entered in the Register shall state the nature of the instrument to which it relates, the day, hour and minute of the presentation, of such instrument for registration, and the names of the parties thereto, and shall refer by number or symbol to such instrument, and shall be signed by the District-Registrar.

See Sec. 76.

Owner to state address.

15. Every registered owner of any land or interest therein and every applicant to bring land under the new system, shall deliver to the District-Registrar a memorandum in writing of some post-office address (within the Province of Manitoba), to which it shall be sufficient to mail all notices that, under this Act, may be required to be sent to such registered proprietor, and every registered proprietor or transferee of any registered interest shall, if required by the District-Registrar so to do, before the delivery of any certificate of title, sign a receipt therefor in his own hand-writing, or otherwise furnish the District-Registrar with his signature, so as to prevent fraud as far as possible.

See Rule 18 and secs. 40, 74, 98, 103, 106, 130 (1) (4), and 143 *post*.

16. Every registration of ownership shall be made on a separate folium of the Register, and upon any transfer of ownership the register of the transferor's title shall be cancelled, and the title of the transferee shall thereupon be entered upon a new folium; and the District-Registrar shall note upon the Register of the title of the transferor the number of the register of the transferee's title, and upon that of the transferee the number of the register of the transferor, so that reference can be readily made from one to the other as occasion may require.

Mode of registration.

See Secs. 74-76, 113, 117 and 123.

17. No instrument of a nature to require cancellation of a certificate of title or an endorsement to be made thereon shall be received and registered in the Land Titles Office, nor any entry thereof made in the books of said office, until the duplicate certificate of title to the lands thereby affected is produced for endorsement or cancellation, as the case may be; unless the production thereof be dispensed with by the District-Registrar under the provisions of the Act.

Instrument requiring cancellation of certificate not to be registered until certificate produced or dispensed with.

See Secs. 73-107, 113-117 and 123, Rules 5, 7 and 8, Sch. R. sec. 130.

18. All transfers, mortgages and instruments to be registered in the Land Titles Office should show the names, residence and additions of the parties thereto.

Instruments to show names, residences and additions.

See Rule 15 *ante*.

19. Transfer and mortgage shall be accompanied by a certificate from the proper officers of the municipality wherein the property is situated that the land has not been sold for taxes, and is not then advertised for sale on account of arrears of taxes.

Tax certificates.

The word "every" has evidently been accidentally omitted at the beginning of this rule.

See Man. Municipal Act 1886, sec. 639, as amended by 50 Vic. cap. 10, sec. 45.

20. Every District-Registrar shall, when required, and upon the payment of the legal fees, furnish, attested by the seal of his office, exemplifications and certified copies of any instruments affecting land which may be deposited, filed, kept or registered in his office, and such exemplification or certified copy shall, provided it is such an instrument as may affect land in his district, be received, registered or filed, as the case may require, by any other District-Registrar in the same manner

and with the same effect as if the original was produced, without proof of the signature of such District Registrar.

See sec. 147 *post*.

Single certificate of several certificates may issue.

21. Upon the application of any owner or of any person entitled to become an owner of lands held under separate certificates of title, or under one certificate of title, and the delivering up of such certificate or certificates of title, it shall be lawful for the District Registrar to issue to such proprietor a single certificate of title of the whole of such lands or several certificates each containing a portion of such land, or a certificate of a portion of the land included in any such certificate of title, in accordance with such application and as far as the same may be done consistently with any regulation for the time being in force respecting the parcels of land that may be included in one certificate of title; and upon issuing any such certificate of title, the District Registrar shall enter on the new certificate of title all the memorials to which the piece of land is at the time subject, and shall cancel, either wholly or partially, pursuant to such application, the previous certificate of title of such land so delivered up, and shall endorse thereupon a memorandum setting forth the occasion of such cancellation and referring to the certificate of title so issued.

Certificate to transferee

22. The District Registrar, upon cancelling any certificate of title, either wholly or partially, pursuant to any transfer, shall make out to the transferee a certificate of title to the land mentioned in such memorandum of transfer, and every such certificate of title shall refer, if practicable, to the instrument of transfer, and the District Registrar shall retain every memorandum of transfer, and cancelled certificate of title, and in the case of a partially cancelled certificate of title shall return the duplicate to the grantor after the memorandum partially cancelling the same has been entered thereupon, or may, whenever required thereto by the owner of an unsold portion of land included in any such partially cancelled certificate of title, or where such a course may appear more expedient, retain such partially cancelled certificate and make out to such owner a certificate of title for such portion or any part thereof, of which he remains the owner.

Time.

23. In the computation of time, unless otherwise specially mentioned, the same shall be reckoned exclusively of the day from which the computation is made, but inclusively of the day on which the Act or proceeding under these rules or under any notice given under the provisions of the "Real Property Act of 1889," is to be done or taken.

Notice of at least.

(a) Where notice of service is required to be made, a certain number of days before the day on which something is to be done, whether the words "at least" are used or not, the day of service or of giving notice

shall be computed as one of such days, but the day on which such thing is to be done shall be excluded from the computation.

24. In all matters and proceedings in a Land Titles Office, in so far as ^{equitable} the same can consistently be done, equitable principles and rules, as ^{principles} established by courts of equity, may be invoked, acted upon and applied.

25. A search for caveats, executions, and judgments shall be considered ^{searches} and charged as one search; but searches in the archives for other documents shall be considered and charged as a separate search for every such document.

Memo. search fees are not now charged when registrations are made.

26. On the filing of a Precept and evidence to the satisfaction of the District Registrar that any certificate of judgment has not been renewed ^{in paid certificate of judgment} or re-registered in the manner provided by law, he may enter a memorial releasing the lands of the judgment debtor therefrom, and thereafter such judgment shall be deemed to have ceased to be binding or a lien upon such lands.

27. On proof to the satisfaction of the District Registrar that proceedings to enforce a mechanic's lien have not been instituted within the time ^{Removal of unpaid mechanic's lien} limited by the Acts respecting mechanic's liens, he may enter a memorial releasing the lands affected thereby, and thereafter such lien shall be deemed to have ceased to be binding or a charge upon said lands.

28. When a certificate of title shall have been endorsed with memorials ^{Renewal of title - this certificate} to such an extent as to interfere with its legibility, the District Registrar may require it to be delivered up for cancellation as by request and issue a new certificate of title in lieu thereof, having entered thereon all the memorials to which the land affected thereby are then subject, and enter the cancellation of the former certificate by memorial setting forth the occasion of its cancellation and referring to the new certificate of title so issued.

29. No certificate of title shall be signed during the hours the Land Titles Office is open for registration, and a final search shall be made ^{When certificates to be signed} before signing such certificate and after the closing of the office for registration purposes.

See secs. 60 and 61 *post*.

AMENDMENT OF LAW RESPECTING LANDS.

Descent of
lands. **27.** Land in the Province shall go to the personal representative of deceased owners thereof in the same manner as personal estate goes.

See secs. 29, 33 and 34 *post*.

When the first Real Property Act was passed in 1885, the 21st section provided that: "After the commencement of this Act (*i.e.* 1st July, 1885) all lands in the Province of Manitoba which, *by the common law*, are regarded as real estate, *shall be held to be chattels real*, and shall go to the executor or administrator of any person or persons dying, seized or possessed thereof, as *other* personal estate now passes to the personal representatives."

The meaning of this section was very difficult to arrive at, and it seemed doubtful to many whether real property had been divested of its character as "realty," and converted into "chattels real;" here again appeared another incongruity, for the definition given in the interpretation clauses to the word "lands" could hardly be reconciled in every case with the apparent intention of this section, and the peculiar distinction made as to those rights and interests in land which, by the common law, were regarded as real estate. In *re Irish*, 2 M. L. R 361, it was held that lands became chattels real for the purpose of devolution, but were not subject to seizure under *fi. fa. de bonis*.

Again, it was asked did this change affect the "seizin" of lands? did it affect those facilities furnished for the conveyance of lands under the operation of the Statute of Uses? And what about the Statute of Mortmain?

These questions may possibly require to be decided in cases which may have been affected by the peculiar provisions of the Act which remained in force from 1st July, 1885, to 28th May, 1886, when the words "*shall be held to be chattels real*" were struck out. (See 49 Vic. c. 28 sec. 5).

With this alteration the old section remained in force, and where a mortgagor died intestate and his administrators released the equity of redemption to the mortgagee before the lands had been registered under the Act, it was held (Taylor, C.J., *Re Lewis*, 5 Man. L. R. 44) that the administrator had no power to release the equity of redemption, because the property had not theretofore been brought under the provisions of the Act. At the time of the first amendment the word "other" was left standing, and thus added further difficulty in arriving at a conclusion as to what the section intended. Section 28 of the Act of 1885, which was amended by 51 Vic. cap. 21, sec. 1, exempted certain lands from the operation of the statute, while it forbid dealings with other lands except under its provisions. The lands affected in the case lastly cited were of the exempted class, and this fact may have influenced the decision.

In an unreported case, *Fleming v. Howard* (1888), Mr. Justice Killam held that an administrator did not become seized of an equity of redemption of a deceased mortgagor, as the statute only affected property known to the *common law* as real estate.

By 51 Vic. cap. 22, sec. 3, which came into force on 18th May, 1888, and was in turn amended by 52 Vic. c. 4, secs. 1-4, the clause was altered to its present shape, and applies to all lands in Manitoba.

28. Hereafter no words of limitation shall be necessary in any conveyance of any land in order to convey all or any title therein, but every deed or instrument conveying land shall operate as an absolute conveyance of all such right and title as the grantor has therein at the time of its execution, unless a contrary intention be expressed in such conveyance; but nothing herein contained shall preclude any conveyance from operating by way of estoppel; and hereafter the introduction of any words of limitation into any conveyance or devise of any land shall have the like force and meaning as the same words of limitation would have if used by way of limitation of any personal estate, and no other.

Effect of conveyance, words of limitation not necessary.

The Victorian Land Transfer Statute, (sec. 65) requires words of inheritance or succession to be implied.

See secs. 33, 34 and 144 *post*.

This section applies to all lands in the Province.

Compare secs. 22, 27 and 138 of the Act of 1885; and secs. 6 and 12 of the Territorial Act, *post*; also sec. 3 (22) and (23) *ante*; and 45 Vic. cap. 2. sec. 24.

There has been as yet no decision as to the interpretation of this clause; it would seem to have reference solely to the forms provided by the R. P. Act, notwithstanding the very general wording of section 33 *post*, for it can hardly be said that the Legislature intended a greater estate to be conveyed than was actually contemplated by the vendor. For instance, were it intended to transfer a life estate in lands under the operation of the R. P. Act, the intention must be specially expressed in the instrument by which the transfer is to be effected; but if lands are subject to the "old system" of registration it is submitted that, in the absence of words of limitation, only a life estate would pass, for the omission of the necessary words of limitation to effect a conveyance in fee, would, of itself, be an expression of contrary intention on the part of the grantor.

Devises
to take
from per-
sonal
represent-
ative.

29. No devise shall be valid or effectual as against the personal representative of the testator until the land affected thereby is conveyed to the devisee thereof by the personal representative of the deviser, saving and excepting such devises as are made by the testator to his personal representative, either in his representative capacity or for his own use.

See sec. 27 *ante* and secs. 33 and 34 *post*.

This section applies to all lands in Manitoba.

Vide secs. 113-117 as to the transmission of estates. The personal representative must cause himself to be registered as owner before he can transfer the lands.

As to duty payable on transmission see sec. 140 *post*.

The executor must prove the will in the Surrogate Court before dealing with the property, *Re Bannerman*, 2 Man. L. R. 377. Any personal representative must be registered as owner before dealing with the lands, *Re Lewis*, Man. L. R. 48. In case of intestacy the administrator is in the same position as the executor under a will.

By this alteration in the law relating to the devolution of estates, it will in every case happen that between the time of the death of the owner and the proving of the will or grant of administration there will be a period during which there would be no one seized of the lands, and no person having authority to deal with them. The remedies of creditors and adverse claimants would remain the same, and could be exercised without interruption; (*Vide* secs. 63 (*e*), 123 and 129 *post*), except in some cases where the action might require to be brought against the personal representative.

Special provision is made (sec. 134 *post*) for compensation to persons deprived of lands registered under this Act. But it may be doubted whether damages could be recovered in case possession was lost by an adverse occupant entering during the vacant period and holding it until a statutory title was acquired. See 46 & 47 Vic. cap. 26, sec. 5 (2).

30. No widow, whose husband died on or after the first day of July, ^{Abolition} A.D. 1885, or hereafter dies shall be entitled to dower in the real property ^{of dower.} of her deceased husband, but shall have the same right in such real property as if it were personal property.

Vide secs. 33 and 34 *post*.

This section applies to all lands in Manitoba.

Compare former Acts, 34 Vic. cap. 2, sec. 38, cap. 6, secs. 2, 3 and 11; and cap. 8; 38 Vic. (1874) cap. 12, sec. 1; and cap. 18; C. S. M. cap. 46; 48 Vic. cap. 28, sec. 24.

Prior to the 15th July, 1870, there do not appear to have been any estates of inheritance in possession in Manitoba.

At least in the writer's experience, which has been considerable, he has not seen or heard of any evidence to justify the conclusion that prior to that date any of the Selkirk settlers were seized of heritable estates in land, and in the absence of such seisin no widow would be entitled to dower at common law.

Up to the coming into force of cap. 12 of 38th Vic. on the 22nd July, 1874, rights of dower were governed by the laws of England as they existed at the time of the passing of 1 & 2, Geo. IV. cap. 66. The Intestacy Act of 1871, dealt only with such lands as the husband had not disposed of in his lifetime or by will, the eleventh section guarding the widow's right of dower in other lands. By the enactment of the Queen's Bench Act, cap. 12 of 38 Vic., the laws relating to dower in England as amended by 3 & 4, Will. IV. c. 105, were to govern in determining matters relative to property and civil rights in Manitoba.

At the time the Consolidated Statutes of Manitoba came into force, sec. 11 of 34 Vic. cap. 6, became repealed. It had really become effete so far as the widow was concerned as after 22nd July, 1874, the dower of women married since 1st January, 1834, was completely within the power of their husbands in case they thought fit to dispose of their lands absolutely during their lives or by will; and in case of intestacy, the widow being an heir would have her right to dower satisfied by the inheritance of at least an equal portion in fee simple.

Abolition
of tenancy
by curtesy.

31. No husband, whose wife died on or after the first day of July, A.D. 1885, or hereafter dies shall be entitled to any estate by the curtesy in the real estate of his deceased wife, but shall have the same right in such real estate as a wife has in the personal estate of her deceased husband.

Vide secs. 33 and 34 *post*.

This section applies to all lands in Manitoba.

Compare former Acts. 34 Vic. cap. 6, sec. 11; 38 Vic. (1875) cap. 25, secs. 4 and 13; C. S. M. cap. 65, sec. 16; 44 Vic. cap. 11, sec. 73.

32. A man may make a valid conveyance or transfer of his real estate ^{Husband} to his wife, and a woman may make a valid conveyance or transfer of ^{may convey to wife} her real estate to her husband, without in either case the intervention of ^{and vice versa.} a trustee.

These sections, 27 to 32, apply to all lands in Manitoba, whether brought under the operation of the "new system" or still remaining subject to the "old system" of registration.

Vide secs. 33 and 34 *post*.

33. It is hereby declared that sections twenty-seven to thirty-two, ^{Application of secs. 27 to 32.} both inclusive, were intended to extend, and the provisions of said sections shall be held to have extended from and after the first day of July, A.D. 1885, and shall hereafter extend to all land in the Province of Manitoba and to every estate and interest therein.

See sec. 34 *infra*.

This section was added by 51 Vic. cap. 22 sec. 3 to remove doubts as to the construction of Part III of the Real Property Act of 1885, and a further amendment was made by 52 Vic. cap. 4, sec. 2. A similar clause was enacted applicable to the Territorial Act, secs. 5-17, by 51 Vic. Can. cap. 20, sec. 4.

The clauses of the Act of 1885 abolishing estates tail are omitted in this Act.

In re Lewis, 5 M. L. R. 44, it was held by Taylor, C.J., that under the 21st section of the Act of 1885, as amended by 49 Vic. cap. 28 sec. 5, the administrator of a mortgagor who died in 1886, could not convey the mortgaged lands, as they were not registered under the Act at the time of the death of the mortgagor, and consequently did not vest in his personal representative.

34. Notwithstanding anything contained in this Act all conveyances ^{Exceptions as to certain transactions.} and leases made by the heir or heirs of any deceased owner of lands, or of any estate or interest therein, and all proceedings taken by way of foreclosure or sale or notice of sale under mortgage or by way of adminis-



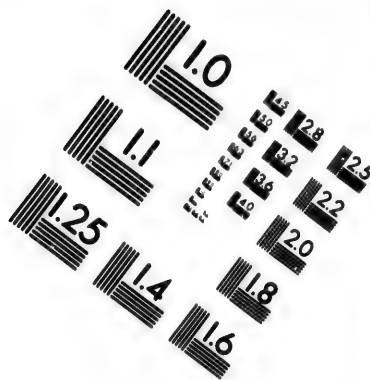
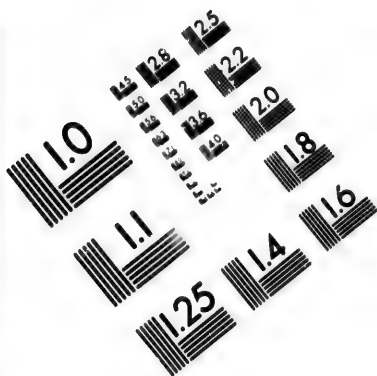
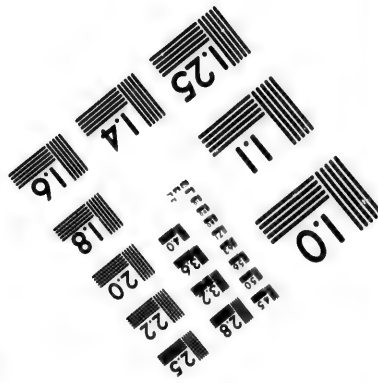
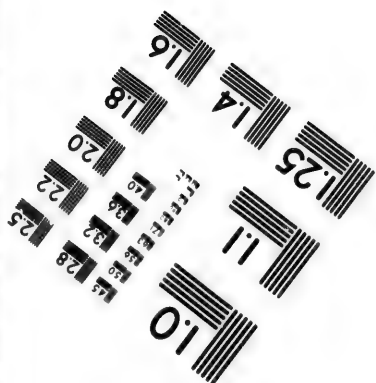
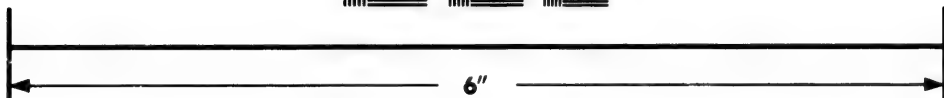
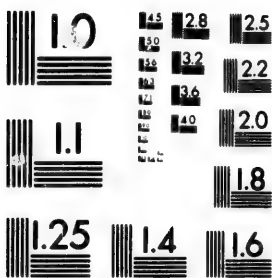


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tration or partition in Equity by or against heirs of any such deceased owner before the fourth day of September, A.D. 1888, shall be good and valid, and shall be as effectual to pass the title to such lands as if such conveyances and releases had been executed or such proceedings taken by or against the personal representatives of such deceased owner, and all such proceedings so begun may be continued and carried to a conclusion with the same effect in all respects as to title and otherwise as if they had been taken by or against such personal representative.

This provision became necessary owing to want of uniformity in the interpretation of the clauses of Part III, secs. 21-27 of the Act of 1885, and the Legislature having declared (sec. 33) the true intention to be different from the construction placed by the Court, and by the bar, upon these sections, taken with section 28 of the Act of 1885.

A volume might easily be written on sections 27-34, composing, with a few changes, Part III of the Act of 1885. They have already caused much confusion and no doubt will continue to lead to difficulties of construction, as they form part of a statute to which they are by no means essential, and give rise to complications where simplicity was aimed at. When such changes in the general laws relating to real estate were deemed advisable, it would have cleared the present Act respecting *registration* of the greatest difficulty that has presented itself in its practical operation, had they been made the subject of a separate Act.

MANNER OF BRINGING LANDS UNDER NEW SYSTEM.

Registrations to be made in L. T. O., Winnipeg, until Province divided.

35. Until the abolition of the present Land Titles Office at Winnipeg as provided by Section eighteen hereof, applications to bring lands under the new system may be received by the Registrar-General affecting lands in any part of the Province (a), but after such abolition, no District-Registrar shall receive any application affecting any lands not situate in the Land Titles District for which he acts. (b) In case before such abolition any portion of the Province is constituted Land Titles District under Section four hereof then all applications to bring lands situate in such District under the new system shall be made to the District-Registrar for such district. (c)

(a) By sec. 18 *ante* the Registrar General was directed to act under the Real Property Act of 1885, and amendments, until such abolition.

(b) Sec. 10 *ante* provides that instruments, etc., affecting lands in the new lands titles districts, shall, when transmitted, be kept and dealt with as if they had been made or registered under this Act.

(c) See notes to sec. 4 *ante* as to districts and dates when constituted.

36. After such abolition as aforesaid all lands under the new system for which an application to bring under the new system has been made in the Land Titles Office at Winnipeg shall continue to be dealt with by the Land Titles Office of which the City of Winnipeg forms a part, except where such lands are at any time included in any other Land Titles District.

Lands under Act to remain in Winnipeg office until new district including same appointed.

See notes to sec. 14 *ante*.

37. The District-Registrar shall not, except as hereinafter provided, bring under the new system any lands for which the patent from the Crown has not been granted. This section shall only apply to such lands as require to be originally granted by patent from the Crown.

Lands for which Crown patent not issued.

See secs. 38 and 39. Compare *re Irish*, 2 M. L. R. 361, as to lands unpatented.

This section would not apply to the regular sections granted to the Hudson Bay Co. under sec. 22 of the Dominion Lands Act, nor to the lands surrounding the Company's Forts, nor to the lands of settlers reserved at the time Rupert's Land was transferred to Canada. Nor would it apply to the lands or interests mentioned in the first four sub-sections of the 32nd section of 33 Vic. Can., cap. 3, commonly called the "Manitoba Act," and validated by Imperial Act 34-35 Vic., cap. 28. Nor would this section apply in cases where lands have vested in virtue of a statute, as for instance some of the lands granted as bonus to the Canadian Pacific Railway.

Swamp lands acquired by the Provincial Government under the terms of agreement with the Dominion, and those held by the Province under any other title would require to be granted by letters patent before any registration could be made.

Certificate for pre-emption before patent.

38. In the case where the patent for a homestead has been issued the District-Registrar may upon receiving a certificate from the proper officer of the Department of the Interior that all sums of money due the Dominion Government for the pre-emption connected with such homestead have been paid and that the patent therefor will issue to such homesteader grant a certificate of title before the issue of the patent therefor.

The Minister, his deputy, or the Secretary or Assistant Secretary of the Department of the Interior would be proper officers from whom such a certificate might be received and acted upon in case of Dominion lands, and the certificate should definitely state the lands and the name of the "homesteader" in whose name the Crown grant shall issue, as well as the fact that the pre-emption has been fully paid for. Compare *re Irish*, 2 M. L. R. 361.

As to provincial lands, a patent would be required.

Actual production of patent unnecessary.

39. The District-Registrar may grant a certificate of title for lands without requiring the actual production of the patent if he is satisfied by letter, telegram or other information from the proper officers of the Department of the Interior that the patent for such lands has actually been issued.

The advice from the Department ought to give the date of the letters patent, describe the lands and the patentee, and state whether any special reservations have been made.

See secs. 63 and 84 as to mining rights reserved.

See note to sec. 38 *supra*, as to proper officer.

Applications.

40. The owner of any estate or interest in land whether legal or equitable, may by himself, his attorney or agent (*a*), apply to the proper District-Registrar to have his title registered under the new system, but it shall be in the discretion of the District-Registrar to refuse to entertain any such application, except upon such conditions as he may think fit to impose, unless all other persons who are admitted to be interested

in the land shall be parties to the application; and each person entitled to any estate or interest in such land, whether legal or equitable, and whether it be a life estate or an estate in remainder or reversion, shall be entitled to a separate certificate for such estate or interest. Discretion of D. R.

(1) But in case of any application heretofore or hereafter made by the owner of the equity of redemption to bring mortgaged lands under the new system, such application shall be deemed to have been made for the bringing under the new system of the whole estate, both legal and equitable, and all the interests of the mortgagor and mortgagee in such lands; but nothing herein contained shall affect any rights, remedies or matters of contract between the mortgagor and mortgagee in relation to such lands. (b) Effect of application by owner of equity of redemption.

See Rules 2-7, sec. 26 *ante*.

(a) In Victoria proof of agency is required except where the agent is a solicitor,—*A'Becket Transfer of Land*, p. 76.

Before executors can apply for registration as owners of the testator's land, they must prove the will in the Surrogate Court. *Re Bannerman*, 2 M. L. R. 377.

The following is the usual form of application, with directions for filling up, and the affidavits verifying the statements, and the signature where there is a direction in the application:

FORM OF APPLICATION TO BRING LAND UNDER THE
OPERATION OF "THE REAL PROPERTY ACT OF 1889."

TO THE DISTRICT-REGISTRAR, Land Titles District of

I (Name of applicant and his residence, profession, trade or occupation, to be inserted), hereby apply to have the land hereinafter described brought under the operation of the Real Property Act of 1889,

And I declare:—

1. That I am the owner of an estate (If absolute owner, insert in fee simple in possession; if estate owned be a less one, insert of freehold in possession for my life, or otherwise, as the case may require), in all that piece of land, being (Insert, if practicable, part of, and describe generally the Crown allotment, section, or otherwise according to the Crown Grant. What follows in this paragraph may be omitted if the land comprise the whole of the Crown allotment), which land contains (insert area), or thereabouts, and is described in the document numbered in the schedule hereto (Insert sufficient description to identify the land).

2. That such land, including all buildings and other improvements thereon, is of the value of dollars and no more.

3. That there are no documents or evidences of title affecting such land in my possession, or under my control, other than those included in the schedule hereto.

4. That I am not aware of any mortgage or encumbrance affecting the said land, or that any other person hath or claims to have any estate or interest therein in law or in equity, in possession, remainder, reversion, or expectancy (*If there be any, add other than as follows, and set the same forth*).

5. That the said land is occupied (*If occupied, add by whom, and state his name, residence, trade, profession or occupation, and the nature of the occupancy*).

6. That the names and addresses, so far as known to me, of the occupants of all lands contiguous to the said lands are as follows: (*Insert name, residence, trade, profession, or occupation, or a person unknown*).

7. That the names and addresses, so far as known to me, of the owners of all lands contiguous to the said lands are as follows: (*See note above*). (*If the certificate of title is not to issue to the applicant, add—And I direct the certificate of title to be issued in the name of (After name, add residence, trade, profession, or occupation; and if the land is to be taken in parts, say, as to the land described in the schedule of land marked A:— and in the name of as to the land described in the schedule of land marked B).*)

8. That I am of the full age of twenty-one years.

Dated this day of , one thousand eight hundred and .

Made and subscribed at

in the presence of

Applicant to sign here before the District-Registrar or a Notary Public, Justice of the Peace, or Commissioner for taking affidavits; if abroad, before a Notary Public, or a Commissioner for taking Affidavits to be used in Manitoba; or Judge of a Court of Record.

SCHEDULE OF DOCUMENTS REFERRED TO.

(*If the Crown Grant alone, say, Crown Grant of the land; if more than the grant, the instruments to be numbered. The date of each instrument and the names of the parties to it will suffice.*)

(*Here insert any necessary schedules of land.*)

APPLICATIONS.

81

AFFIDAVIT BY APPLICANT UNDER RULE 2, SCH. S. SEC. 26.

MANITOBA: } I
County of } of in the County of
}, make oath and say:

1. I am the (*If made by person other than applicant, insert "attorney" or "agent of the"*) applicant named in the within Application.

2. I have a personal knowledge of the facts set forth in the said Application.

3. The facts, matters and things in the said Application mentioned are true in substance and in fact.

Sworn before me at
this of
A.D. 18
A Commissioner in B. R., etc.

AFFIDAVIT BY WITNESS UNDER SEC. 45 AND RULE No. 4, SCH. S. SEC. 26, WHEREIN CERTIFICATE OF TITLE IS TO ISSUE TO A PERSON OTHER THAN APPLICANT.

MANITOBA, } I
County of } of the of
To Wit: } in the County of
}, make oath and say:

1. That I was personally present, and did see the within Application duly signed and executed by the part thereto.

2. That the said Application was executed at

3. That I know the said part and that he is of the full age of twenty-one years.

4. That I am a subscribing witness to the Application.

Sworn before me at
in the County of
this day of
in the year of our Lord 18

A Commissioner for taking Affidavits in B. R. etc.

MAN.L.A.

It was held (in 1887) by the Registrar-General under the Real Property Act of 1885, in *re The Man. N. W. Railway Co. of Canada and The Commercial Colonization Co. of Manitoba*, that the last named Company being a corporation organized under "The Companies Acts 1862 to 1886" in England, could not be registered as owner of lands in Manitoba, until a license to hold lands was obtained from the Provincial Secretary under 46 & 47 Vic., cap. 38. See 49 Vic., cap. 11, sec. 4. In *re "The E. & C. Gurney, Co.,"* of Hamilton, Ont., the same rule was followed in *re Massey Mfg. Co.* (in 1888) it was held that a Company incorporated under the Dominion Statute as a trading corporation, could hold lands for the purposes of its business within the Province and obtain a Certificate of Title as owner thereof.

A mortgagee under the old system may apply for the registration of his estate as mortgagee, (*vide sec. 59 post*) subject to the equity of redemption, and the effect of such application is to remove the lands from the operation of the old system, notwithstanding that the equitable estate remains in the mortgagor; this would happen whether or not default had been made in the payment of the mortgage moneys, and it would be discretionary with the District Registrar whether the mortgagor should be made a party to the application, or be notified of the fact that application had been made to bring the lands under the new system, or he might require the certificate to be issued to him subject to the mortgage. Where the mortgagor applies and has the land brought under the Act, the rights of the mortgagee are not affected, but if the land is sold under power of sale it must be transferred by an instrument substantially in accordance with the provisions of this Act.

Although several certificates of title may issue respecting the same land, each for an interest of a separate nature, no

confusion need arise, for each certificate should specify the exact nature of the interest in the lands of which each individual proprietor is registered as owner, and each of such certificates ought to shew upon its face the nature of the outstanding interests to which other persons are entitled amounting to a charge upon the estate or interest certified to be in the registered owner.

The following memoranda, based on "advice to applicants," by the Commissioner of Titles at Melbourne, afford plain and simple instructions rendering it easier for applicants to avail themselves of the advantages conferred by the Statute, and in ordinary cases to take proceedings in person and supply the information necessary to obtain a certificate of title under the provisions of the Act:—

1. The applicant may obtain at the Land Titles Office or from any law stationer a "FORM OF APPLICATION," and after perusing it and the marginal notes, fill up the blanks carefully and in a legible manner.

2. Any number of contiguous pieces of land in the same district may be included in one application, subject to the regulations as to consolidation (Rule 6, Sch. S, sec. 26, *ante*), but when the title is passed, if separate certificates are to be required, it is proper to value separately every parcel for which a separate certificate is to issue, as fees are payable on each additional Certificate of Title.

3. An owner who has sub-divided land, and in whom are vested the sites of any roads or ways not clearly and notoriously dedicated to the public use, should include such sites in his application. He will then be in a position to grant rights of user to future purchasers.

4. If the application is made by the agent of a corporation, or by the guardian of an infant, or by the committee of the estate of a lunatic, such alterations may be made in

the form as the character of the parties or the circumstances of the case may render necessary.

5. Where plans of subdivision are referred to, it is well to obtain and file the plan or a copy of it with the application, and to refer to it in the schedule of documents.

6. Applicants need not, in the first instance, be at the trouble or expense of ascertaining whether any registered charges or liens affect the property. After the application and papers have been lodged at the Land Titles Office proper searches will be made by the officers, and if any such incumbrance be found, the necessary consent, satisfaction or discharge can be afterwards obtained.

7. No abstract of title need be filed. The abstract books are themselves consulted, and the deeds perused according to the custom of ancient conveyancers. The applicant merely pays the fee on application and files it, duly signed, verified and attested, with the documents of title specified in the schedule; and should take the precaution of obtaining a receipt for the latter, which will be supplied by the District Registrar on request.

8. Lands for which an application has been made may be dealt with before the certificate of title has issued, and when granted the Certificate is made to meet the intervening circumstances. Mortgages for instance may be filed as provided by section 95 *post*, if the applicant desires to raise money on the land after lodging his application.

9. The applicant can obtain one certificate of title representing the whole land (subject to Rule 6, Sch. S., sec. 26 *ante*,) or any number of certificates representing different portions of it, as the title to each portion is completed; and either in his own name, or in the name of such persons as he may appoint. See notes to sec. 45 *post*.

41. The father, or if the father be dead, the mother or other guardian of any infant, or the committee or guardian of any lunatic or person of unsound mind, may apply to bring lands under this Act on behalf of such infant, lunatic or person of unsound mind, and a person holding a power of attorney authorizing the sale of a freehold or other estate in any land may apply in respect of such lands in the name and on behalf of the proprietor, unless such power of attorney expressly prohibits him from doing so.

Application on behalf of infant, lunatic, etc.

See sec. 59 as to special mention of the infant's age or nature of disability to be made in the certificate of title.

See secs. 110-112 as to Powers of Attorney.

12. Upon the filing of such application, such lands shall become subject to the new system, and no registrations under the old system shall be made as to such lands unless such application is withdrawn or rejected by the District-Registrar, in either of which events the lands shall be dealt with under the old system.

Effect of filing application.

Under the former Act (sec. 43 of 1885, as amended by 50 Vic., cap. 11, secs. 12 and 13, and 51 Vic., cap. 22, sec. 12) the registration of a certificate of filing of the application was necessary to close the local registry office against the registration of instruments or plans specifically affecting the lands applied for; and registrations in the general register were deprived of any binding effect upon such lands. Now, under the dual system introduced by the present Act, no such certificate of filing appears to be necessary; none has been provided for. Still it is evident that upon receiving an application the District Registrar ought in some manner to note on the abstract the fact of such application having been made, otherwise nothing but actual notice of application could affect a person dealing with the lands under the old system. Upon withdrawal or rejection also, some memorial to mark the altered condition of the title ought to be noted upon the abstract, before the registration of any transactions under the old system.

It is doubtful whether registrations in the general register under the old system made during the time "withdrawn" or "rejected" lands remained subject to the "new system," would bind them without loss of priority after they have returned to the operation of the "old system." The amendment to the Administration of Justice Act by 51 Vic., cap. 29, sec. 33, does not provide for the registration of certificates under the "new system" until the lands have been brought under its operation.

After application no dealings can be registered in the register of deeds, but *semble* statutory conveyances may be treated as substantially in conformity with the provisions of the Act. *Re Irish*, 2 M. L. R. 361. As to such deeds after the Certificate of Title has issued, see sec. 77 *post*.

Duties of
D. R. as to
titles.

43. Thereupon it shall be the duty of the District-Registrar, forthwith to cause to be examined all titles which may be submitted to him, and to deliver to the applicant a written memorandum of all defects which on such examination may be found in the title, and which he thinks should be removed.

See Rules 3, 5, 7, 15, Sch. S, sec. 26 *ante*, and sec. 52 *post*.

D. R. may
direct service
of
notices.

44. On the removal of such defects, or if none shall exist, the District-Registrar shall require the applicant to give such notices as he may think should be given and on being satisfied of the applicant's title and of the due service of all notices that he may think requisite, shall proceed to bring such lands under the provisions of the new system, and to issue the certificate of title therefor to the person who appears to be entitled to the same.

For form certificate of title see Schedule A, sec. 60 *post*.

See Rules 3-7, Sch. S, sec. 26 *ante*; and sec. 52 *post*.

The applicant must make out at least a safe-holding title; and it has been the practice of the Land Titles Office, as it was established under the Act of 1885, to admit the registration of any title when it was unexceptional in equity,

and outstanding legal estates and interests were not allowed to interfere with its admission to the Register, as the provisions of the Statute respecting notice and the lodging of caveats permitted an extended application of the equitable doctrine of acquiescence in the administration of the Act.

A substantially good title, regardless of technicalities, is all that is required to have land brought under the Statute. Nothing more is necessary in any case than any solicitor or conveyancer ought to require in duty to his client, and in many cases less is required, as safe-holding titles can be passed and an absolutely marketable title does not need to be made out to obtain a certificate. On the other hand, as the Province becomes an insurer against adverse claims, care has to be exercised in the examination of the title, and if a purchaser has bought a piece of land, voluntarily incurring the risk of taking a defective title by submitting to conditions which prevent objections being taken, he ought not to expect the public to adopt his bargain without due investigation.

An applicant who considers that the production of any plan or document, or the service of any notice, is unnecessarily required by any of the Examiners of Title, can bring the matter before the District Registrar by way of appeal, and his decision, if unsatisfactory, may be again appealed from to a Judge of the Court of Queen's Bench in a summary manner as provided by section 118 *post*.

45. Any person applying to bring lands under the new system may in his application, or upon special request in writing addressed to the District-Registrar prior to the drafting of the certificate of title, direct the certificate of title for such land, or any part thereof, to be issued in the name of some other person, and such direction as aforesaid whether comprised in an application or in a special request, shall from the time of its filing with the District-Registrar, have the effect of conveying and transferring to such person as regards such land, all the estate or interest, whether legal or equitable, which the applicant is applying to have registered under the said new system as fully and effectually as if

Direction
to issue
title to
other than
applicant.

Effect of
such direc-
tion.

Signature
to be veri-
fied.

such estate were transferred by deed. (a) The signature to such application or request must be verified by the affidavit of the subscribing witness in the manner provided under the old system. (b) This section shall be considered to have been in full force and effect since the first day of July, A.D. 1885. (c)

(a) This statutory conveyance is not accompanied by any covenants, and would amount to a quit claim deed from the applicant to the directee. See secs. 46 and 48 as to the effect of such direction in cases withdrawn or rejected. The operation of the conveyance is suspended until the filing of the written instrument, whether application or request, in the Land Titles Office. It is only the applicant who has power to convey in this manner, the directee is not authorized to execute a subsequent direction in favor of another person with a similar effect under the Statute.

It might be in the discretion of the District Registrar under sec. 44 *supra* to require notices to be served on persons beneficially interested, where such a direction is made by an applicant who holds in a fiduciary capacity.

(b) See Rule 4, sch. S, Sec. 26, and forms given after notes to sec. 40 *ante*.

(c) The retroactive effect is given to cover cases prior to 50 Vict. c. 11, sec. 11.

A direction, to be acted on, must be lodged before the certificate of title is drafted, as from the time the certificate has reached the "Engrossing Room" directions must be disregarded. In *re Paterson* it was held by the Registrar-General (March, 1888) that a direction vested in the directee only what estate the applicant had at the time of the filing of the direction, and that an unregistered mortgage previously executed had priority as against the conveyance by direction.

On a sale of land the following practice may be adopted :

1. If all the purchase money has been paid, the vendor may become the applicant and direct the certificate of title to issue to the purchaser, or to the purchaser as to the part of the land sold, and to himself (the vendor) as to the residue.

2. If the purchase money has not all been paid, and the vendor is willing to give, and the purchaser to accept, a title subject to a lien or charge for the unpaid purchase money, the vendor may become the applicant and direct the certificate of title to issue in the name of the purchaser "subject to a charge on the land in favor of (*insert vendor's names and additions*) for dollars, the amount of purchase money for the said land now remaining unpaid with interest thereon, etc., etc." But in such a case the vendor could only enforce his rights by a suit in Court in case of default. Under such circumstances the vendor might apply to have the certificate registered in his own name subject to the agreement for sale filed as a charge upon his title, and subsequently execute a transfer under the Act, which would operate as a merger of the agreement.

3. An intending purchaser may agree to buy the land at a certain price conditionally upon the vendor obtaining a certificate of title under the Statute clear of encumbrances, within a certain specified time; and when the title is approved by the Examiner of Titles a direction may be filed vesting the property in the purchaser. The certificate of title will then issue directly to him.

This system of DIRECTIONS will be found useful in effecting partitions of property held between different owners. They should apply together to bring the whole land under the Statute, and direct the certificate of title to issue as to one particular part to one of the applicants exclusively, and so on with the other parts, and thus the expense of manifolded partition deeds may be avoided.

Application may be withdrawn as to whole or part of lands.

Consent in certain cases required.

Proviso as to costs of caveator.

Certificate to be registered

46. An applicant may withdraw his application as to the whole or any part of the lands comprised therein at any time prior to the registration of the certificate of title, (a) but in case the certificate is directed by the applicant to issue in the name of some other person, the applicant shall not be allowed to withdraw his application until he produce the written consent duly verified of such person to such withdrawal; (b) and the District-Registrar shall in such cases, as well as in cases wherein he shall reject the application, return to the applicant, or to the person appearing to him to be entitled thereto, all evidence of title lodged in support of the application as to the part withdrawn, together with the balance of fees properly returnable to him. (c) Provided always that in all such cases if a caveator shall have been put to expense without sufficient cause by reason of such application, he shall be entitled to receive from the applicant such compensation as a judge on a summons in Chambers may order, and on the withdrawal or rejection of such application the District-Registrar shall forthwith issue a certificate of the withdrawal or rejection thereof, in the prescribed form and under the seal of his office, and shall, at the expense of the original applicant, cause the same to be registered at once under the old system, and upon the registration of such certificate of withdrawal or rejection, the land thereby affected shall cease to be subject to the provisions of the new system, and thereafter any further instruments dealing with or affecting said land may be properly registered under the old system. (d)

(a) A fee of \$1.00 is payable on filing a withdrawal (see Tariff), and the following form may be used:—

FORM OF WITHDRAWAL.

THE REAL PROPERTY ACT OF 1889.

Land Titles District) Application No.
of)

In the matter of (*here describe lands to be withdrawn.*).

I, *of (give post office address and addition as in application),* the applicant in the above numbered application hereby withdraw the said application in so far as it affects the above described lands, subject, however, to the conditions as to the consent of interested parties and the payment of fees, costs and damages imposed by the provisions of the said Act.

Dated at this day of A.D. 189

Signed in presence of)
(Witness to sign here)) (*Signature of Applicant.*)

NOTE.—The execution of a withdrawal must be attested and verified by the affidavit of the subscribing witness in the same manner as other instruments presented for registration. See note to sec. 74 *post* as to form.

(b) The consent of any interested party must be verified in the same manner as other instruments.

FORM OF CONSENT TO WITHDRAWAL.

(Commencement same as withdrawal.)

I, _____ of (*post office address and addition*), the person in whose name the certificate of title for the above described lands was directed to issue, hereby consent to the withdrawal of said application in so far as it affects the said lands.

Dated at _____ this _____ day of _____ A.D. 18 _____

Signed in the presence of }
(Witness). } (Signature.)

(For Form of Affidavit see note to sec. 74, *post*.)

(c) The fee on returning papers is \$1.00 (see Tariff), and the rebate of fees in ordinary cases returnable to the applicant would be the amount of commission paid towards the "Assurance Fund" plus the fees paid for unissued certificates, less the fees on withdrawal or rejection, and registering same under old system; and if any instruments are required to be returned, the fees chargeable for return of documents. In cases where more than ten instruments have been perused in the examination of title, a fee of 20 cents per instrument is chargeable, and would have to be paid by the applicant or deducted from the rebate.

(d) FORM OF CERTIFICATE OF WITHDRAWAL OR REJECTION OF AN APPLICATION.

"THE REAL PROPERTY ACT OF 1889.

I certify that Application No. _____, whereby (*Insert applicant's names and additions as in application*) applied to bring the following lands under "The Real Property Act of 1889" (*Here describe the lands which are withdrawn, or respecting which the application is to be rejected*) has been this day ("withdrawn" or "rejected" as the case may be) and this certificate is

issued for registration under the Lands Registration Act of Manitoba and to the end that dealings with or affecting said above described land may be properly registered under the "Old System."

Dated at the Land Titles Office at this day of
A D. 18
(L.S.) District Registrar.

Sec. 21 *ante* provides that all fees must be paid before the certificate can issue to permit of registration under the old system.

D. R. may reject application in whole or part if proof of title not produced in reasonable time.

Evidences of title to be returned.

17. The District-Registrar may in all cases reject the application as to the whole or any part of the lands therein comprised if the applicant fail within a reasonable time, to produce the evidence and proof of facts necessary or required to make out a good safe-holding title, unless said applicant shall adduce satisfactory proof that he is proceeding without unnecessary delay in removing defects and complying with the requisitions made in the title, and in case the application is rejected as aforesaid, the District-Registrar shall return to the applicant, or the person entitled thereto, all evidences of title lodged in support of the application as to the part rejected, together with the balance of fees to which he may be properly entitled, after deducting the amount required to register the certificate of rejection under the old system as herein provided, and such registration shall have the effect of withdrawing the land thereby affected from the provisions of the new system and of bringing them again under the old system.

See notes to sec. 46 *supra*.

But he must in cases where a direction has been filed obtain the consent of the directee or cause notice to be given as required by sec. 48 *post*.

Certificate of withdrawal or rejection where direction filed.

Direction not notice of title

48. In case of the withdrawal or rejection in whole or in part of any application to bring land under the provisions of the new system, under which a direction or request has been filed with the District-Registrar that the certificate of title shall issue to some other person, (a) the certificate of withdrawal or rejection, so soon as signed by the District-Registrar, shall have the effect of revesting the lands as to which such withdrawal or rejection shall have taken place in the person in whom, had no such direction or request been filed, they would have remained vested as fully and effectually as if no such direction or request had been filed as aforesaid, (b) and no person shall have notice, (c) from such direction or request having been filed, of any right to such lands that may exist

between the parties to or named in the direction or request. Provided, ^{Provido as to consent.} however, that the District-Registrar shall not allow such withdrawal or rejection except in the case of a withdrawal upon the written consent of the person to whom the certificate of title was directed to issue, (d) and in the case of a rejection, upon the written consent of the person to whom the certificate of title was directed to issue, or upon the expiration of the time limited in a notice of intention to reject (e) given by the District-Registrar to him; provided also that nothing herein contained ^{Rights of parties saved.} shall affect the rights as between themselves of any of the parties to such direction or request.

(a) See secs. 45, 46 and 47 *supra*.

(b) Subject, however, to caveats or liens filed against the interest of the directee during the time the estate remained vested in him.

(c) That is constructive notice from the record of the direction.

(d) See note *b*, sec. 46 *ante*.

(e) See sec. 143 *post*. This notice would of course require to be personally served at the expense of the party interested. See also Rule 23, Sch. S, sec. 26 *ante*.

19. Proceedings under this Act shall not abate or be suspended by death or transmission or change of interest; but in any such event the District-Registrar before whom the proceedings are pending may make such order for carrying on, discontinuing, or suspending the proceedings upon the application of any person interested as under the circumstances may be just, and may require the production of such further evidence and such notice to be given as he may think necessary. ^{Proceedings not to abate by death.}

As the order would vary according to the circumstances of each case no general form can be given. The order should be drafted by or under the direction of the District Registrar. Apparently the omission to make an order would not affect the proceedings or the certificate of title issued under the application in any ordinary case. Where notice of death has been given the will must be proved or administration granted before the personal representative can deal with the lands. *Re Bannerman*, 2

M. L. R. 377 ; and *re Lewis*, 5 M. L. R. 48 ; see also sees. 3, 113, *et seq.*, *post*.

It may be doubted whether this section is intended to apply to proceedings pending in Court or before a Judge under provisions of this Act.

Death between execution and registration.

50. In case any applicant or registered owner shall die after executing any instrument affecting land and before registration thereof, the registration of such instrument may nevertheless be proceeded with in accordance with this Act, and shall be valid notwithstanding such death

Compare sees. 81 and 113, *et seq.*, *post*.

Death between application and issue of certificate.

51. In case an applicant or the person to whom he or the person applying in his name (a) may have directed a certificate to be issued shall die in the interval between the date of the application and the issue of the certificate, the certificate shall be issued in the name of the applicant or in the name of the person to whom it shall have been so directed to be issued, as the case may require, and the land shall devolve in like manner as if the certificate had been issued prior to the death of the applicant or of such person. (b)

(a) It does not appear quite clear as to how any person can apply in the name of another and give such a direction as could have the effect of conveying the land.

(b) In the event of the death of the applicant or the directee between the time when the lands became subject to the new system and the issue of a certificate of title the provisions of sec. 113 would apply to the lands in dealing with them. See also *Re Bannerman*, 2 M. L. R. 377 ; and *Re Lewis* 5 M. L. R. 48.

Notice to be served on adverse claimant.

52. In case the District-Registrar shall find that some person other than the applicant or registered owner of any estate or charge has, or appears to have, some right or claim to or against the land in question adverse to that of the applicant or such registered owner, he may cause such person to be served with a notice stating that a certificate of title will issue as set out in such notice for such lands unless such person appearing to have such adverse claim shall, within the time limited by such notice—which time shall in each case be fixed by the District-Registrar—file a caveat (a) forbidding the issue of such certificate of title, and in default of a caveat being filed by such person within the time so

limited or before the issue of such certificate such person having or appearing to have such adverse claim shall, if he has been personally served with such notice, be forever estopped and debarred from setting up any claim to or in respect of such land (b).

(a) Compare secs. 54, 55, 130 and 137. See also secs. 53 and 57, as to notice in cases of tax deeds being served substitutionally.

(b) Upon the service personally of such notice an estoppel would work outside the Statute. See note to sec. 44 *ante* as to appeal against unnecessary requisitions.

Omission to lodge a caveat, or permitting a caveat to lapse, may be ground for a non-suit under sec. 137 *post* in an action to recover damages for deprivation of the land.

Great caution should be exercised by the District Registrar in permitting the service of official notices of this nature, for in some cases it might happen that the person so notified would be entitled to be ejected by due legal process, or for other causes ought not to be compelled to occupy the position of a plaintiff, as he would be required to do if he filed the necessary caveat to preserve his rights. See Rule 6, Sch. R, sec. 130.

FORM OF NOTICE.

THE REAL PROPERTY ACT OF 1889.

In re application No. in the LAND TITLES OFFICE for the District of

(*Insert applicants name and additions as in application*) has applied to bring the land described at the foot hereof under the above Statute; and the District-Registrar has directed notice of the application to be served on you, and has appointed days from such service, after which time, unless a caveat has been lodged forbidding the same the land will be brought under the operation of said Act by issuing a certificate of title to the applicant or to whom he may appoint, and you will thereafter be forever estopped and debarred from setting up any claim to or in respect of said lands.

NOTE—1. The lodging of caveat suspends all further action until caveat be withdrawn, or lapses, or until decision obtained from the Court or a

Judge. 2. Any person lodging caveat wrongfully and without reasonable cause is liable to make to any person who may have sustained damage thereby, such compensation as the Court or a Judge may decide. 3. For practice as to caveats see sec. 130 of the above Act, the sub-sections thereof and rules in Schedule R. 4. Any person lodging a caveat must give an address in the Province at which notices and proceedings may be served.

LAND REFERRED TO

(Insert description of lands as in application.)

Dated at the Land Titles Office at this of A.D. 18

(Seal)

District-Registrar.

N.B.—Where applicant claims under a tax deed, a special reference should be made to the fact in the notice, as for instance: "*Applicant claims title through a tax sale deed of above lands to him by the Municipality of bearing date the of A.D. 18 .*"

Substitutional service.

53. As to service of any notice or proceeding upon any person provided for in section fifty-seven the District-Registrar in a proper case may order that such notice may be served substitutionally, and such substitutional service shall have the same effect as personal service of the notice or proceeding upon the person intended to be affected thereby.

Such substitutional services can only be permitted in cases where title is claimed through tax sale deeds. Notices served substitutionally have effect only in virtue of the Statute under which substitutional service is authorized. See secs. 52, 57 and 137.

An order for substitutional service can not issue until the District Registrar has been satisfied by affidavits that the person to be notified is absent from the Province and that after diligent search his residence can not be discovered.

The terms of the order are settled in each case by the District Registrar.

SERVICE OF NOTICES, ETC.

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FORM OF ORDER.

THE REAL PROPERTY ACT OF 1880.

Province of Manitoba } In the matter of application in file No.
Land Titles District } and
of } (Here describe the lands).

Upon the application of the said applicant and upon hearing read the affidavit of filed herein I do order that service of the notice of said application be effected on by publishing a copy of said notice in the once in each week during the two weeks succeeding the date hereof and by mailing copies of said notice and of this order in envelopes, postage prepaid, addressed as follows:

and also posting up a copy of said notice and of this order in this office.

And I do further order that the said parties do have from such mailing or posting and from the last of said publications within which to file a caveat herein.

Dated at the Land Titles Office at this day of A.D. 18 .

District-Registrar.

(Seal)

NOTE.—The FORM OF NOTICE (sec. 52, ante) can be varied for publication by omitting Notes 1, 2, 3 and 4 and referring to the order that service should be effected by publication in a newspaper.

51. All notices and proceedings affecting lands may be served in the same manner and upon the same persons, officers, and functionaries as in suits and proceedings in the Court of Queen's Bench or under the Administration of Justice Act. Services to be made as in suits.

See the Court of Queen's Bench Act 1885, secs. 41-44, and the Administration of Justice Act 1885, sec. 8, and 49 Vic., cap. 35, sec. 32.

55. Notices and proceedings affecting or intending to affect corporations, whether domestic or foreign, or any unincorporated company, partnership, firm, or person, whose chief place of business or head office is without this Province, may be served upon any firm, person, company or corporation who, within this Province, transacts or carries on any business as the general agent, for any such person, partnership, firm, company or corporation, and service upon such agent of any such notice or proceeding shall have the same effect, and shall be treated as personal service upon such person, partnership, firm, company or corporation. Service on corporation or partnership.

MAN.L.A.

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Compare 46 & 47 Vic., caps. 38, 39, and 48 Vic., cap. 15, sec. 43 (The Court of Queen's Bench Act 1885).

What evidence of title may be acted on.

56. The District-Registrar and the Examiners of Titles, in investigating titles, either before or after land is brought under the new system, may receive and act upon any evidence which is receivable in any court in this Province, and receive and act upon affidavits and statutory declarations touching or affecting any question of title; and may also receive and act upon any evidence which the practice of English conveyancers authorizes to be received in an investigation of a title out of court, and any other evidence, whether the same is or is not receivable or sufficient in point of strict law or according to the practice of English conveyancers, provided the same satisfies the District-Registrar of the facts intended to be made out thereby, and may act upon the following rules:

Rules of evidence—
Recitals.

(1) Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, registered copies of instruments, Acts of Parliament, or of the Legislature, or statutory declarations upwards of ten years old, shall, unless or except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

Acknowledgment of payment in deed.

(2) Where a registered deed of conveyance acknowledges payment of the consideration money, such acknowledgment shall be sufficient evidence of payment, except so far as such acknowledgment may prove to be inaccurate.

Original of registered deed.

(3) It shall not be necessary to produce or account for the original of any registered deed, document or instrument.

Proof by affidavit or *viva voce*.

(4) Proofs may be in the form of affidavit, statutory declaration or certificates, or may be given *viva voce* or may be in any other manner or form that under the circumstances of the case is satisfactory to the District-Registrar in regard to the matters to which the same relate.

(5) The District-Registrar and the Examiners of Titles may receive and administer oaths, affidavits and affirmations touching or affecting any matter or question of title.

Compare 46 & 47 Vic., cap. 28, and 49 Vic., cap. 35, sec. 21. Sub-sec. 19 of sec. 3 declares what may be received as *prima facie* proof of Crown Grants.

See Rules 2 and 3 Sch. S. sec. 26 *ante*.

The power to administer oaths, etc., would be strictly confined to matters and questions of title under the Statute.

The officers mentioned would not be functionaries capable of receiving declarations under the Act respecting extra judicial oaths.

57. In the case of tax sale deeds, the District Registrar shall not take notice of any technicality, or irregularity in the tax sale, or in any of the proceedings relating thereto, and it shall not be necessary to have the title to the land described in such deed examined prior to such sale, (b) but a certificate from the treasurer of the municipality which has issued such deed shall be furnished to the effect that there were taxes in arrears and due for which such lands could properly have been sold for taxes at such sale, (c) and the District Registrar shall satisfy himself that the sale was fairly and openly conducted, (d) and he shall also cause to be served upon all persons appearing to be the persons who would have been interested in such lands, except for such tax deed, a notice requiring them within the time limited by such notice to contest the claim of the tax purchaser by way of caveat, and in default of a caveat being filed within the time so limited, or before the registration as owner of the person entitled under such tax deed, all persons so served with notice shall be forever estopped and debarred from setting up any claim, to or in respect of the lands so sold for taxes, and the District Registrar shall register the person entitled under such tax deed as owner in fee simple of the said land. (e)

(d) In case of lands under the new system being sold for taxes, the District Registrar, on an application of the person entitled under the tax deed may dispense with the customary production of the certificate of title, (f) and cancel the same in full or partially, as the case may be, by memorial on the certificate of title in the Register Book, and may issue a new certificate of title to the person entitled under the tax deed as registered owner of said lands. The provisions of this section shall apply to such application the same as if the application were as to lands not already under the new system. (g)

(b) An examination is always necessary to see what persons have such interest in the lands as might entitle them to notice of the proceedings being taken in the Land Titles Office; also to ascertain in the case of "Manitoba Act" Grants whether the lands were exempt from taxation by reason of the half-breed grantee being under the age of 18 years and still owner of the lands when the taxes were imposed.

See Manitoba Municipal Acts as to exemptions.

(c) The Treasurer's certificate ought to be in the form of an affidavit or declaration, and should shew the years for which taxes were owing and unpaid at the time of the sale.

(d) FORM OF AUCTIONEER'S CERTIFICATE.

(Formal parts same as order sec. 53 ante).

- I, *(insert names and additions of the officer)* make oath and say:
1. That my names and legal additions and the official capacity in which I acted in this matter are above correctly set forth.
 2. That by virtue of a warrant issued under the Manitoba Municipal Act, 1886, and Amending Acts *(or as the case may be)* for the sale of lands for arrears of taxes bearing date the of A.D. 18 , I did, on the day of A.D. 18 , in pursuance to advertisements duly published, at in the County of in Manitoba, being the time and place mentioned in such advertisement, sell by public auction the lands above described together with other lands, mentioned in said warrant and advertisement.
 3. That the said sale was conducted by me in a fair, open and proper manner and according to the best of my skill and judgment.

Sworn. etc. ;

(e) See Form given at sec. 52. It is proper in notices given under this section to add a special memo., giving shortly the particulars of the tax deed under which title is claimed.

Mortgagees, encumbrancees and lien holders ought to be notified as well as owners, but it is doubtful whether execution creditors are entitled to notice; it would seem prudent in some cases that they should be notified. See sec. 52 and notes; also as to substitutional services, see sec. 53 and notes.

(f) The production of the certificate could not be dispensed with until after 30 days' notice, published as provided by sub-sec. 6 of sec. 68, but the proofs of non-deposit, etc., would not be necessary in such a case. It is in the discretion of the District Registrar to require a certificate to be produced even in the case of a transfer under a tax deed, and he has power within his district, under sec. 68,

sub-sec. 1, to compel any person having it in his possession to produce the certificate for the purpose of cancellation.

The Municipal Act requires the registration of all tax deeds to be made within six months from the expiration of the time for redemption in order to secure priority over subsequent purchasers and mortgagees for valuable consideration without actual notice.

(g) This proviso requires notices to be served on all the parties interested in the lands in the same manner as if the tax purchaser were an applicant for first registration of the title. See sec. 52 and notes *ante*.

REGISTRATION OF TITLE.

58. Every certificate of title shall be deemed and taken to be registered under the provisions and for the purposes of this Act, so soon as the same shall have been marked by the District-Registrar with the folio and volume on and in which it is embodied in the Register Book, (a) and every transfer and other instrument purporting to transfer, or in any way to affect land under the new system, shall be deemed to be so registered as soon as a memorial thereof as hereinafter described shall have been entered in the Register upon the folio constituted by the existing certificate of title of such land. (b)

When title
deemed to
be regis-
tered.

(a) See Rules 16 and 29, Sch. S, sec. 26 *ante*.

(b) See secs. 74 and 76, and Rule 16, Sch. S, sec. 26.

Sec. 74 applies to all instruments, and declares that the enregistration makes the instrument, so memorialized, part and parcel of the Register, and that it is only when so embodied and *sealed* that it becomes effective as to the lands described in the Register. The "Register" here referred to is the existing duplicate certificate of title kept by the District Registrar under sec. 60 *post*. Sec. 81 provides how instruments shall operate as between the parties to them prior to their having become effective through enregistration.

In the matter of the Massey Manufacturing Co. and Gibson, a case was submitted by the Registrar General for the opinion of the Court, the facts being as follows:—

On the 29th March, 1888, W. G. was registered owner of the lands, and the Massey Mfg. Co., on that day registered a writ of execution they had issued against him, mentioning these lands in the schedule annexed to the writ.

On the 1st May, 1888, a transfer of the land from G. to H., dated 23rd February, 1888, was filed and registered, and thereupon a certificate of title was issued to H., but subject to the *n. fa.* Affidavits were then filed, shewing that the transfer had been executed on the day of its date, and the money paid within a few days afterwards, and on the strength of this proof application was made to have the *n. fa.* removed from the Register and certificate of title as an encumbrance affecting the lands. The Registrar General refused the application, and, at the request of the parties, submitted the question to the Court, whether under the circumstances the registration of the execution against G. bound the lands as against H.

The case was fully argued before Mr. Justice Bain in Chambers: W. H. Culver, Q C., for the Coy., and C. P. Wilson for H., the registered owner, asking to have the *n. fa.* removed.

His Lordship held that apart from the Real Property Act the land would not be bound by the execution; but looking at the provisions of the Act the unregistered transfer would not avail to prevent the execution binding the land. The whole object and policy of the Act is for all purposes, and against all the world to vest the beneficial ownership of the land in the person named in the certificate of title. This ownership, which is the creation of the Statute, is changed only by the registration of a transfer which has been executed in accordance with the Act. A properly executed transfer gives the transferee a right to have the land registered in his name, (a) but, as regards the land itself, until

(a) See sec. 81 *post*.

it is registered it has no effect whatever, and the land still remains the property of the transferror, the registered owner. The Registrar General was right in issuing the certificate of title to H. subject to the execution, and in refusing the application for its removal. [Since going to press this case had been reported; *Herbert & Gibson*, 6 M. L. R. 191.]

Mr. A'Becket, in his work on the *Transfer of Land Statute* (Victoria), cites the following cases under section 42 of that Act on the point of the necessity of registration to the operation of every instrument, viz:—*National Bank v. United Hand-in-Hand, etc., Co.*, 4 App. Cases 391, 407; *McCahill v. Henty*, 4 V. L. R. (E.) 68 arg.; and *Lange v. Rudwolt*, 6 S. A. L. R. 75; 7 S. A. L. R. 1, discussed in *Cuthbertson v. Swan*, 11 S. A. L. R. 102.

Compare "*Sedgfield's Practice*," 82, 88.

59. The owner (a) of land or any estates or interest therein, under the operation of the new system shall be entitled to receive a certificate of title to the same; (b) and if any certificate be issued to a minor, lunatic or person of unsound mind or to a person under any other disability, the District-Registrar shall state in such certificate of title the age of such minor, or the nature of the disability so far as known to him.

Owner entitled to certificate. In case of disability same to be stated.

(a) See *ante* sec. 3 (2) as to interpretation of the word "owner."

(b) See sec. 40 and notes *ante*. It would be in the discretion of the District Registrar whether the trustee for the sale, etc., of land should receive a certificate of title unless all persons interested had consented to the application.

The District Registrar is directed by the Act to make no entry in the Register of any notice of trust. See notes to sec. 86 *post*.

60. All certificates of title to be granted by the District-Registrar shall be in the prescribed form (Schedule A) and shall be signed by the District-Registrar and shall be sealed with the seal of his office, (a) and a duplicate thereof shall be preserved and registered by the District-Registrar in his office, in a book to be kept for that purpose. (b)

Form of certificates of title.

(a) No certificate of title can be signed during the time the office is open for purposes of registration. See Rule 29, Sch. 8, see, 26 *ante*.

(b) As to the "Register," see Rule 9, Sch. 8, see, 26 *ante*. Compare see, 68 (7) *post*, where the certificate bound up in the "Register" is referred to as the "original."

SCHEDULE A.

(Section 60.)

CERTIFICATE OF TITLE.

A. B. of *(here insert description and if certificate be issued pursuant to any transfer referred to, insert memorandum of transfer on back)*, is now seized of an estate *(here state whether in fee simple or for life, or as the case may be)*, subject to such encumbrances, liens and interests as are notified by memorandum underwritten *(or endorsed hereon)*, of that piece or parcel of land known or described as follows:

In witness whereof I have hereunto signed my name and affixed my seal this day of

District Registrar,

L.S.

Signed in the presence of)
the day of)

Date of
certificate
of title.

61. The date of the certificate of title shall in all cases be the date appearing in the body thereof, or the date of registration of the last encumbrance (whether existing or discharged) registered under the new system and endorsed on the back of the certificate of title, whichever shall be the later date.

See sees. 64, 146, and 147 *post*.

Tenants in
common
may re-
ceive sepa-
rate certi-
ficates.

62. In all cases where two or more persons are entitled as tenants in common to an estate of freehold in any land such persons may receive one certificate for the entirety or each may receive a separate certificate for his undivided share.

As to joint tenants see see. 82 *post*.

EFFECT OF REGISTRATION OF TITLE.

Implied
qualifica-
tions.

63. The land mentioned in any certificate of title granted under this Act, shall, by implication, and without any special mention in the cer-

certificate of title, unless the contrary be expressly declared, be deemed to be subject to:

(a) Any subsisting reservations contained in the original grant of said land from the Crown; (1) Reservation in grant

(b) Any municipal charges, rates or assessments at the date of such certificate, or which may be thereafter imposed on the said land, or which have theretofore been imposed for local improvements and which are not then due and payable; (2) Taxes, etc.

(c) Any subsisting right of way or other easement, howsoever created upon, over or in respect of said land; (3) Easement

(d) Any subsisting lease or agreement for a lease for a period not exceeding three years where there is actual occupation of said land under the same; Lease not exceeding 3 years.

(e) Any judgments, decrees, or orders, for the payment of money against the registered owner of such lands, and any mechanic's liens affecting the said lands which may be respectively registered since the last date of the certificate of title, and maintained in force under the provisions of the Acts relating to the Administration of Justice, the Acts respecting the County Courts, or of the Act respecting Mechanic's Liens (4) and priority of registration in the Land Titles Office shall prevail in settling the priorities between them; Judgments, decrees, etc.

(f) All public highways embraced in the description of the lands included in any certificate shall be deemed to be excluded from the certificate; Public highways

(g) Any right of expropriation which may by statute be vested in any person or body corporate; Expropriation

(h) The provisions of Section sixty five of this Act.

See Act of this Act.

(1) See section 84 *post*.

(2) As to tax sale deeds see sec. 57 (a) *ante*.

(3) As to registration of easements see sec. 79 *post*.

(4) As to executions see 52 Vic., cap. 36, secs. 13 and 14, which limits their binding effect on lands to such executions as were in the Sheriff's hands on 1st April, 1889, and their renewals.

In *Bart v. Clarke*, 5 M. L. R. 150, it was held (Bain J.) that a County Court judgment for less than \$100 registered before the County Court Act of 1887 came into force, and

re-registered before 1st November, 1887, was valid, and could be enforced in equity.

Since 29th April, 1884, no premium note or undertaking under the Manitoba Mutual Fire Insurance Companies Act, creates a lien upon lands. 47 Vic., cap. 34, sec. 7.

Rules 26 and 27, Sch. S, sec. 26 *ante*, provide for the removal of lapsed judgments and mechanics' liens.

The Seed Grain Mortgage Act of 1876 (C. S. M. cap. 48), is still in force, and such mortgages would remain in full binding effect, although any mention thereof might be omitted from the certificate of title, because the rights of the Crown cannot thus be interfered with. A person led into error by such omission might have recourse under the provisions of sections 132-141 *post*.

A lien may be secured for seed grain advances by a municipality, on filing notes in the office of the Clerk of the County Court, sec. 52 Vic., cap. 10, sec. 9.

Every person dealing in lands should, before concluding the transaction, satisfy himself as to caveats, pending suits, judgments, liens, etc. (see secs. 108, 130, 131 and Rule 8, Sch. S, sec. 26 *ante*), by a search at the proper Land Titles Office, as even where the lands affected have been specifically mentioned, the memorial may not appear on the certificate of title which may not have been produced in the Land Titles Office since the filing of the caveat or charge. At the same time it might be asked whether there is a chance of a prior certificate having issued which would affect the title under the exceptions made by section 64 *post*.

Certificate
conclusive
evidence of
title

64. Every certificate of title granted under this Act, when duly registered, shall (except in case of fraud wherein the registered owner or encumbrancee shall have participated or colluded and as against such registered owner or encumbrancee) so long as the same remains in force and uncanceled under this Act, be conclusive evidence at law and in equity as against Her Majesty, as represented by the Government of the Province of Manitoba, and all persons whomsoever, that the person

named in such certificate is entitled to the land included in such certificate, for the estate or interest therein specified, subject to the exceptions and reservations mentioned in section sixty three, except as regards any portion of land that may by wrong description of boundaries or parcels be included in such certificate, when the holder of such certificate is neither a purchaser or mortgagee (a) for value, nor the transferee of a purchaser or mortgagee for value, (b) and except as against any person claiming under any prior certificate of title granted under this Act in respect of the same land, and for the purpose of this section that person shall be deemed to claim under a prior certificate who is holder of, or whose claim is derived, directly or indirectly, from the person who was the holder of the earliest certificate granted, notwithstanding such certificate may have been surrendered and a new certificate granted upon any transfer or dealing.

Exceptions.

(a) The "Mortgagee" is not mentioned in the corresponding section of the Victorian Act.

(b) See secs. 85, 133 and 143 *post*.

65. Any certificate of title issued upon the first bringing of land under the provisions of the new system, and every certificate of title issued in respect of the same land, or any part thereof, to any person claiming or deriving title under or through the applicant owner, shall be void as against the title of any person adversely in actual occupation of, and rightly entitled to such land or any part thereof, at the time when such land was so brought under the new system, and continuing in such occupation at the time of any subsequent certificate of title being issued in respect of the said land.

When certificate void as to adverse occupant.

See sec. 3 (21), as to what "possession" includes, and sec. 67 (9) *post* as to ejectments, etc.

Compare sec. 127 of the Act of 1885, and sec. 40 *ante*.

The Registrar-General *in re Jackson and McPherson* (1887), required the applicant to vindicate his title by ejecting the adverse occupant, before registration under the Act.

On this subject, and as to what constitutes "*adverse possession*," see A'Becket's *Transfer of Land Statute* (Victoria), p. 108 (g), cases there cited; *Chisholm v. Capper*, 6 W. W. & A'B. (L.) 225; N. C. 22, 56, 60; *Staughton v. Brown*, 1 V. L. R. (L.) 150, 159, 163; *Grave v. Wharton*, 5 V. L. R.

(L.) 97; *Robertson v. Keith*, 1 V. R. (E.) 11; 1 A. J. R. 14; and *Murphy v. Michel*, 4 W. W. & A'B. (L.) 13, 19. See also *Jones' Torrens' System*, pp. 56, 67-70 and 333. His Lordship Chief Justice Taylor, in the introduction to his work on the Quieting Titles Act, says: "The possession of the property and not merely the paper title should be inquired into. * * * If the possession has not always gone with the title, satisfactory evidence of the reason cannot safely be dispensed with."

In *Scott v. Nixon*, 3 Dr. & War. 105, Lord St. Leonard's remarks "that a clear title, and just as good as any other title might be acquired by adverse possession." See *Taylor on Titles*, 53; *Dart on Vendors*, 369; *Taylor's Vendors and Purchasers*, 389; *Darling on Limitations*, 389; *Hyde v. Delamoy*, 6 Jur. 119.

Certificate conclusive evidence in suit for specific performance

66. In any suit for specific performance brought by a registered owner of any land subject to the new system, against a person who may have contracted to purchase such land, not having notice of any fraud or other circumstances which, according to the provisions of this Act, would affect the right of the vendor, the certificate of title of such registered owner shall be held in every court of law or equity to be conclusive evidence that such registered owner has a good and valid title to the land and for the estate or interest therein mentioned or described, and shall entitle such registered owner to a decree for the specific performance of such contract.

See sec. 147 *post* and Rule 20 Sch. S, sec. 26 *ante*, making certified copies evidence.

Compare sec. 67 *post*, as to ejectment and other actions.

This section must be read in connection with sections 61 and 65 *ante*, and sees. 85, 133, 143, and 146 *post*. The section precludes technical objections by an unwilling purchaser seeking to escape from his contract.

Ejectment and other cases

67. No action of ejectment or other action for the recovery of any land under the new system shall lie or be sustained against the registered owner for the estate or interest in respect to which he is so registered, except in the following cases, that is to say:

- (1) The case of a mortgagee as against a mortgagor in default; *Mortgagee*
- (2) The case of an encumbrancee as against an encumbrancer in default; *Encumbrancee*
- (3) The case of a lessee as against a lessor in default; *Lessee*
- (4) The case of a person deprived of any land by fraud as against the person registered as owner of such land through fraud, or as against a person deriving otherwise than as a transferee *bona fide* for value, from or through a person so registered through fraud; *Fraudulent or voidable transfer*
- (5) The case of a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of such other land or its boundaries as against the registered owner of such other land not being a transferee of such other land or deriving from or through a transferee thereof *bona fide* for value; *Misdescription*
- (6) The case of a registered owner claiming under the instrument of title prior in date of registration under the provisions of this Act, or in any case in which two or more grants, or two or more certificates of title, or a grant and a certificate of title may be registered under the provisions of this Act in respect to the same land; *Prior instrument*
- (7) For rights arising or partly arising after the date of the certificate of title under which the registered owner claims; *Rights subsequently arising*
- (8) For rights arising through possession; *Possession*
- (9) And in any case other than as aforesaid, the production of the registered certificate of title, shall be held in every court of law or equity to be an absolute bar and estoppel of any such action *(d)* against the person named in such instrument as seized of, or as registered owner or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding. *In all other cases certificate of title absolute bar.*

(a) This paragraph is wide enough to cover default in any condition made by the lessee, whether implied under sec. 89 (2) *post*, or expressed in the contract.

Mr. A'Becket, under the corresponding section (138) of the Victorian Act, refers to *Saunders v. Wadham*, 4 S. A. L. R. 73; *Bucknall v. Reid*, 10 S. A. L. R. 188.

(b) See secs. 64, 85, 133 and 143.

(c) See sec. 65 *ante*.

(d) This includes actions at law *ejusdem generis*, but it would not be a bar to a suit to enforce an equitable claim. See secs. 123 and 129 *post*. In this connection reference

may be had to the case of *Cuthbertson v. Swan*, 11 S. A. L. R. 102.

See *Jones' Torrens' System*, 324.

POWERS AND DUTIES OF DISTRICT REGISTRAR.

Powers of Dis. R. 68. The District Registrar may exercise the following powers in addition to others conferred under this Act.

Duties of Dis. R. (1) He may require the owner or mortgagee, or other person interested in any land in respect of which any transfer, lease, mortgage, incumbrance or other dealing, or release from any mortgage or encumbrance about to be transferred or transmitted, or in respect of which any transfer or transmission is about to be registered, or any agent of any such owner, mortgagee or other person or any person having an instrument in his possession in any capacity to produce any such instrument in his possession or within his control, affecting such land or the title thereto.

See sec. 121 *post*. See form *infra* sub-sec. 3.

The Queensland Royal Commission on the Real Property Acts reported as follows to Parliament in 1879. See Report, page 15 :

"The extent of the power of the Registrar-General to call for the production of documents seems to be not clearly defined. We think that it should extend to requiring, and, if necessary, compelling the production of any document relating, or purporting to relate, to land under the provisions of the Acts which it is in his judgment necessary or desirable to have produced; and that he should be authorized to retain any document which the holder had improperly obtained, or which had been issued or signed in fraud or contravention of the law."

Bankers and money lenders generally should bear in mind that the mere deposit of a certificate of title without lodging a caveat will give no *safe* security, unless they watch the newspapers published or circulating in the neighbourhood of the lands for advertisements of an intention of dealing with the property without the production of the certificate.

SUMMONS TO WITNESSES.

111

ph He may summon any such person as aforesaid, or any person ^{Summons} whose evidence may be necessary or material in respect to any such ^{to all} ^{issues} ^{issues} bonds, or the instruments affecting the title thereto

For form see sub sec. 8 *infra*

ph Every such summons issued by the District Registrar as aforesaid ^{Summons} ^{to all} ^{issues} mentioned, shall be in the prescribed form or to the like effect, and in the event of any disobedience of any such summons being certified to the ^{He is} ^{bound} ^{bound} Court of Queen's Bench, may be enforced by such Court in like manner and by the like proceedings and with a like penalty as subpoenas of such Court.

See sec. 121 *post*

FORM OF SUBPOENA

THE REAL PROPERTY ACT OF 1889

Province of MANITOBA.	} In the matter of application file	
The Land Titles District of		No. and
to wit:		(Here describe the lands.)

To

I command you, and each of you, that all other business and excuses whatsoever ceasing, you do appear personally before the District Registrar for the Land Titles District of in Manitoba, in the Land Titles Office at in the Province of Manitoba, on the day of next, A.D. 189 o'clock in the noon, and so from day to day until the matter herein mentioned be disposed of, and also that you bring with you and produce at the time and place aforesaid (here describe the instrument, etc., to be produced), then and there to testify and show all and singular those things which you, or either of you, know, or the said deed, instrument, record, document or writing doth import, of and concerning this matter on behalf of the Applicant; and this you or either of you, shall by no means omit, under a penalty of Five Hundred Dollars, and all other penalties provided by the said Act.

Witness the hand and official seal of the District Registrar for the Land Titles District of at this day of A.D. 189 .

SEAL

District Registrar.

Correction
of errors in
certifi-
cates, etc.

(4) He may, upon such evidence as may appear to him sufficient in that behalf, so far as practicable, without prejudicing the rights conferred upon transferees for value, correct errors in certificates of title or in the Register, or in entries made therein respectively, or in any memorial certificate, exemplification or copy of any instrument made in or issued (a) from the Land Titles Office, and may supply entries omitted to be made; provided always, that in the correction of any such error he shall not erase or render illegible the original words, and he shall fix the date upon which such correction was made or entry supplied with his initials, and every certificate of title so corrected, and every entry so corrected or supplied, shall have the like validity and effect as if such error had not been made or such entry omitted.

Proviso

(a) Evidently a comma ought to be inserted here.

May enter
caveat on
behalf of
Her Ma-
jesty and
others.

(5) He may enter a caveat on behalf of Her Majesty or on behalf of any person who may be under the disability of infancy, lunacy, or unsoundness of mind, or absence from the Province, to prohibit the transfer or dealing with any land belonging, or supposed to belong, to the Crown or to any such person as hereinbefore mentioned, and also to prohibit the dealing with any land in any case in which it shall appear to him that an error has been made by misdescription of any such land or otherwise, in any certificate of title or other instrument, or for the prevention of any fraud or improper dealing.

It would not appear necessary that this caveat should comply with any of the forms given under sec. 130, nor be subject to any of the rules respecting caveats or procedure in matters of caveat. A simple caution against registration is all that is required.

Absence from the Province would probably be insufficient ground for a caveat after ten years from the date of the instrument conferring title. See sec. 56 (1) *ante*.

See A'Becket's note to sec. 121, sub-sec. III., of the Victorian Act.

May dis-
pense with
production
of certifi-
cate.

(6) The District-Registrar, in case he shall see reasonable cause for so doing, may dispense with the production of any certificate of title, lease or other instrument, for the purpose of entering the endorsement by this Act required to be entered upon the dealing with land; and upon the registration of such dealing the District-Registrar shall note in the entry of the memorial in the Register that no entry of such memorial has been

made on the duplicate grant or other instrument, and such dealing shall, thereupon, be as valid and effectual as if such memorial had been so entered; Provided always, that before registering such dealing, the District-Registrar shall, in such case, require the party dealing to make an affidavit that such grant or instrument has not been deposited by way of lien or as security for any loan, and satisfactorily to account to the District-Registrar for its non-production, and shall give at least thirty days' notice of his intention in some newspaper published in the Land Titles District, if there be such newspaper, or, in the absence of such publication, to give such public notice as the District-Registrar may think necessary. The number of insertions in such newspaper and the form of the notice shall be settled by the District-Registrar.

Must account for non-production and give 30 days' public notice.

A provisional certificate can also be obtained, if necessary, under sec. 7 *post*.

Since the enactment of sec. 109 *post*, this section can only apply to lost or destroyed certificates. The proofs of loss or destruction should be by affidavit, tracing the lost certificate to the last person who had it in custody and who should account for its non-production, and the presumption of its pledge as collateral should be negatived.

FORM OF NOTICE FOR PUBLICATION.

THE REAL PROPERTY ACT OF 1889.

Notice is hereby given that on or after the _____ day of _____ A.D. 18 _____ unless cause to the contrary be shown, I will dispense with the production of the Certificate of Title for (*here describe lands*) issued on the _____ of _____ A.D. 18 _____, to (*insert names and additions of registered owner*) for the purpose of endorsing thereon the memorial of a dealing affecting said lands presented for registration by *the said registered owner* (or by *A. B. a mortgagee, or person interested in said lands, or as the case may be*).

Dated at the Land Titles Office at _____ this _____ of _____ A.D. 18 _____

District-Registrar.

As to deposits as equitable mortgages reference may be had to *London Chartered Bank v. Hayes*, 2 V. R. (E) 104, 2 A. J. R. 60; *Re Nathan*, 1 S. A. L. R. 166; *Richards v. Jones*, *ib.* 167.

MAN.L.A.

Provisional
certificate
may issue
when origi-
nal lost or
destroyed.

(7) In the event of a grant (a) or certificate of title of land being lost or destroyed, the owner of such land, together with other persons, if any, having knowledge of the circumstances, may make a statutory declaration stating the facts of the case, the names and descriptions of the registered owners, and the particulars of all mortgages, encumbrances and other matter affecting such land and the title thereto, to the best of the declarant's knowledge and belief, and the District-Registrar, if satisfied of the truth of such declaration and the *bona fides* of the transaction, may issue to the owner of such land a provisional certificate of title of such land, which provisional certificate shall contain an exact copy of the original grant (a) or certificate of title bound up in the Register, and of every memorandum and endorsement thereon, and shall also contain a statement why such provisional certificate is issued; and the District-Registrar shall at the same time enter in the Register, notice of the issuing of such provisional certificate and the date thereof and why it was issued, and such provisional certificate shall be available for all purposes and uses for which the grant, (a) or certificate of title so lost or destroyed would have been available, and as valid to all intents as such lost grant or certificate; Provided always, that the District-Registrar, before issuing such provisional certificate, shall give at least thirty days' notice (b) of his intention so to do, in some newspaper published in the Judicial District in which such land is situate, or if there be no such newspaper, then by giving such public notice as the District-Registrar may deem expedient. The number of insertions in such newspaper shall be settled by the District-Registrar, (c)

Thirty
days prior
notice to be
given.

(a) The word "grant" here has evidently been inserted through inadvertence, as will be seen by the context.

Compare sec. 60 *ante*, which refers to the certificate bound up in the "Register" as a "duplicate."

(b) FORM OF NOTICE FOR PUBLICATION.

THE REAL PROPERTY ACT OF 1889.

Notice is hereby given that on or after the day of
A.D. 18 a provisional Certificate of Title will be issued to (*insert names
and additions of registered owner*) under the provisions of above Act for
(*describe lands*) subject to all subsisting registered charges, to replace the
Certificate of Title issued to the said (*registered owner's name*) on the
of A.D. 18 , which he alleges to have been lost or
destroyed.

Dated at the Land Titles Office at this of
A.D. 18 .

District-Registrar.

(c) Where the production of a certificate has been dispensed with on a transfer of all the land, a provisional certificate would be unnecessary.

A registered proprietor of several adjoining allotments under separate certificates of title having lost them applied under the corresponding section of the Victorian Statute for a consolidated special certificate, but his application was refused, it being considered that a special certificate should be issued in respect of each allotment: *Sedgefield's "Practice of the Office of Titles" (Victoria) 85.*

(8) The District-Registrar may require the owner of any land, other than town plots, within his district desiring to transfer or otherwise to deal with the same under the provisions of this Act, to deposit a plan of such land signed by the owner, or his properly authorized attorney, with the several measurements and bearings marked thereon, and certified by a Provincial land surveyor, and such plan shall be upon one of the following scales:—

(a) If the land, or the portion thereof proposed to be transferred or dealt with, is of less area than one acre, then such plan shall be on a scale of not more than two chains to one inch. May require plan to be filed on following scales.

(b) If such land, or the portion thereof proposed to be transferred or dealt with, is of greater area than one acre, but not exceeding five acres, then such plan shall be on a scale not more than five chains to one inch. Over one and not more than five.

(c) If such land, or the portion thereof proposed to be transferred or dealt with, is of greater area than five acres, but not exceeding eighty acres, then such plan shall be on a scale not more than ten chains to one inch. Over five and not more than eighty.

(d) If such land, or the portion thereof proposed to be transferred or dealt with, is of greater area than eighty acres, then such plan shall be on a scale of not more than twenty chains to one inch. Over eighty.

(e) If such proprietor neglects or refuses to comply with such requirements as aforesaid, it shall not be incumbent on the District-Registrar to proceed with the registration of such transfer or dealing. Neglect to comply.

(9) Where parts of different legal sub-divisions or parish lots are included in the same transfer, the plan shall represent the whole of such legal sub-divisions or parish lots, and shall indicate the location of the Parts of legal sub-divisions.

land being lost
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encumbrances
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Registrar, if satis
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N.

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o) on the
been lost or

of

-Registrar.

Proviso. lands to be transferred; Provided always, that this shall not be necessary in the case of lots in a city, town, or village, the plan of which has been registered.

See sec. 69 and 70 *post*.

Owner sub-dividing land shall deposit plan.

69. Any owner sub-dividing land for the purpose of selling the same in allotments shall deposit with the District-Registrar a plan in duplicate of such sub-division on a scale of not more than four chains to one inch, provided that such plan shall exhibit distinctly all roads, streets, passages, thoroughfares, squares or reserves appropriated or set apart for public use, having the measurements marked thereon, and also all allotments into which the said land is divided marked with distinct numbers or letters, and such plan shall show distinctly a sufficient number of astro-nomic bearings and measurements from which can be deduced the bearings and dimensions of each and all the allotments into which said land is divided, and shall also show the original section or lot lines according to the survey thereof by the Dominion Government, or a sufficient number of said lines to show the location and connection of such sub-division therewith, and shall be signed by the owner or his agent and certified as accurate by a Provincial land surveyor—under oath in the form in Schedule T hereto.

D. R. may require new plan to be filed.

(a) The District-Registrar may require the owner of any land desiring to deal with the same under the new system and which has heretofore been sub-divided, or which is comprised within the limits of any city, town or village, and the location of which in his opinion is not sufficiently well or accurately defined upon any existing registered plan, to file a plan of the same in accordance with the provisions of the foregoing section.

See sec. 68, sub-secs. 8 and 9 *ante*. But *quere* whether it is not the *foregoing sub-section* that is intended to be referred to.

SCHEDULE T.

FORM OF SURVEYOR'S CERTIFICATE.

I, (*name of surveyor*) of the (*place of residence*), Provincial Land Surveyor, make oath and say that I was present at and did personally superintend the survey represented by this plan and that the survey and plan are correct.

Sworn before me this
day of A.D. 18
J. P. or Com. in B. R., etc.)

70. All railway or other corporations shall hereafter deposit with the District-Registrar, plans of their right of way, and station grounds, showing the area taken from each quarter section or parish lot as the case may be. Railways to deposit plan of right of way.

Provision as to these plans will be found in the General Railway Acts, and in each company's special act of incorporation.

71. For the purpose of payment of any fees fixed by this Act or by tariff of the Lieutenant-Governor-in-Council, the value of land shall be ascertained by the oath or solemn affirmation of the applicant, owner or person acquiring land, (a) but if the District-Registrar be not satisfied as to the correctness of the value so affirmed or sworn to, it shall be lawful for him to require such applicant, owner, or person deriving such land by transmission, to produce such other evidence as he may think necessary, or a certificate of such value under the hand of a valuator, which certificate shall be received as conclusive evidence of such value for the purpose aforesaid. (b) Value of land—how ascertained.

Provided further, that lands in rural municipalities not sub-divided into lots or blocks shall be valued according to their value for agricultural purposes, including the improvements and buildings thereon. And all other lands shall be valued according to their actual value, including improvements and buildings thereon. Estates less than freehold shall be valued the same as freehold estates, unless the District-Registrar, for sufficient cause shown, directs otherwise. Lands in rural municipalities.

(a) On first application the affidavit verifying the facts therein set forth is usually sufficient. See second form following sec. 40 *ante*.

(b) See tariff following sec. 21 *ante* as to fees, and sec. 140 *post* as to commissions payable on first applications and upon transmissions by death or insolvency.

REGISTRATIONS—TRANSFERS.

72. When land under the new system or any portion of such land, is intended to be transferred or any right-of-way or other easement is intended to be created or transferred, the registered owner may execute a memorandum of transfer in the form contained in Schedule B to this Act, which memorandum shall, for description of the land intended to be dealt with, refer to the certificate of title of such land, or shall give such description as may be sufficient to identify the same, and shall contain an accurate statement of the estate, interest, or easement intended to be Memorandum of transfer and what it must contain.

transferred or created, and a memorandum of all leases, mortgages and other encumbrances, to which the same may be subject ; and such transfer, if it be endorsed on the instrument evidencing the title of the transferor may be in the following form :

Form of transfer endorsed on certificate.

I, the within named A. B., in consideration of
dollars paid to me by C. D., transfer to said C. D. *(here state the easement,
estate or interest intended to be transferred)*.

Dated this _____ day of _____ 18____

Witness : A.B.

As to land tax sale transfers see sec. 57 (a) *ante*, which must be registered within six months.

As to implied covenants, see secs. 80, 98, and 99 *post*.

A transfer is effective only upon registration (sec. 74 *post*), but it confers upon the transferee a right to be registered as owner (sec. 81 *post*).

As to transmissions see 113 *et seq. post.*

SCHEDULE B.

MEMORANDUM OF TRANSFER.

I, A. B., being registered owner of an estate (*state the nature of estate*), subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten (*or endorsed hereon*), in all that land containing (*as the case may be*). (*Here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries and accompany it by a diagram*), do hereby; in consideration of the sum of \$ _____, paid to me by E. F., the receipt of which sum I hereby acknowledge, transfer to the said E. F. all my estate and interest in the said piece of land. (*When a lesser estate, then describe such lesser estate*).

In witness whereof, I have hereunto subscribed my name this
day of

(Signature.)

Signed on the day above named
by said A. B. in presence of
G. A.

MEMO :—Transfers may be by endorsement on the certificate of title ; (see Form sec. 72.) For forms of transfer of

mortgages, encumbrances, leases, etc., see Schedules F, G and H, (sec. 98). When the transfer is made by a separate instrument it must be in the foregoing form, or comply substantially with it, *i.e.*, it must purport to be made by the "registered owner" and must refer to encumbrances if any exist (see sec. 72). No seal need be affixed by the vendor. The title passes on the sealing by the District Registrar. See sec. 74, and note to sec. 96 *post*.

73. If the memorandum of transfer purports to transfer the whole or part of the transferror's interest in the land mentioned in any certificate of title, the transferror shall deliver up the certificate of title of said land, and the District-Registrar shall, when registering the transfer, enter in the register and on the duplicate certificate of title a memorandum cancelling the same, either wholly or partially, according as the memorandum of transfer purports to transfer the whole or part only of the interest of the transferror in the land mentioned in such certificate of title, and setting forth the particulars of the transfer.

If transfer is of whole or part of land mentioned in the certificate.

Compare Rule 22, Sch. S, s. 26 *ante*.

Purchasers should assure themselves that there are no unpaid rates affecting the land and that it has not been sold for taxes since the date of the vendor's certificate of Title. See also Note (4) sec. 63 *ante*, and Rule 19, Sch. S, sec. 26 *ante*. If there are unpaid arrears, he should either obtain the amount from the vendor or require a certificate that they have been discharged. He should also arrange to have the certificate of title produced at the proper Land Titles Office for the purpose of having the transfer registered. He should also search the General Register as to caveats and general charges, and assure himself that there are no rights subsisting under any adverse possession of any part of the land; and also that there are no rights of way, rights to light, or other easements acquired by user, or subsisting over, or upon, or affecting the land; and where the possession is not adverse the interest of any tenant of the land should be ascertained.

Every instrument except transfer may be in duplicate.
Affidavit of execution.

Priority according to time of registration.

71. Except as hereinafter otherwise provided, every instrument presented for registration under the new system may be in duplicate except a transfer and shall, unless a Crown grant, Order-in-Council, instrument under the seal of any corporation, or certificate of judicial proceedings, be attested by a witness who shall prove the execution thereof in the manner required by said chapter Sixty of the Consolidated Statutes of Manitoba and amendments thereto, and shall be registered in the order of time in which the same is presented for that purpose; and instruments registered in respect of or affecting the same estate or interest, shall, notwithstanding any express, implied, or constructive notice, be entitled to priority according to the time of registration, and the District-Registrar, upon registration thereof, shall file the same, or a duplicate thereof, in his office; and so soon as registered every instrument shall, for the purposes of this Act, be deemed and be taken to be embodied in the Register as part and parcel thereof, and such instrument, when so constructively embodied, and stamped with the seal of the District-Registrar, shall thereupon create, transfer, surrender or discharge, as the case may be, the estate or interest therein mentioned in the lands mentioned in the said instrument.

Compare secs. 69-72, chap. 7, of the Consolidated Statutes of Manitoba.

Soundness of mind is necessary on the part of a witness, and that he understands the nature of an oath and is not a party to the instrument.

Compare secs. 58, 77, 78, 81, 99, and notes.

In the discretion of the Inspector old system forms may be ordered to be registered and are then given effect by sec. 77 *post*. Persons dealing with lands should satisfy themselves that no objections will be taken to the form of instruments before closing.

See sec 3 (12), as to meaning of the word "instrument." Also *Herbert v. Gibson*, 6 M. L. R. 192.

Registration dates from the time of filing. *Rule 10*, Sch. S. sec. 26 *ante*.

Instruments unfit for registration may be rejected by the registrar and no instrument may be registered to affect land under the new system except in the manner provided by this Act. Instruments substantially in conformity with

the Act may be received, but in order to pass an estate it must be *executed* and *registered* in accordance with the new system. Under the statute instruments are inoperative as affecting lands or interests in lands until registered, saving however the rights of the parties to unregistered documents as between themselves. See secs. 77 and 81 *post*, and notes under sec. 58 *ante*.

The affidavit may be according to the last form given under sec. 40 *ante*.

See note to sec. 100 *post* as to essential form of discharges of mortgages or encumbrances, for the purpose of enregistration and release of the lands affected.

C. S. M. Cap. 60, sec. 35, Consolidated Statutes of Manitoba, as amended, provides as follows :

35. All deeds of lands sold under process issued from the court of Queen's Bench in Manitoba, and all certificates of sales of land for taxes given under the hand of the treasurer of a municipality or other authorized person, shall be registered within six months after the sale of such lands or after the date hereof, (See provisions as to the registration of tax deeds in the Manitoba Municipal Acts), otherwise the parties respectively claiming under any of such sales shall not be deemed to have preserved their priority as against a purchaser in good faith, who may have registered his deed prior to the registration of such deed from the sheriff, treasurer, warden, or other officer ; provided that deeds of land heretofore sold for school taxes shall be deemed to have preserved their priority if the same be registered within six months after the expiration of the time allowed by the law to redeem.

Lands sold under process to be registered within six months.

45 Vic., cap. 13, sec. 7.

Cap. 60.

45 Vic., cap. 13, sec. 7.

The provisions of the " Lands Registration Act of Manitoba " as amended, relating to the proof of the execution of instruments produced for registration under the " old system " are as follows :—

15. Grants from the crown may be registered by the production thereof to the registrar, with a true copy sworn to by any person who may have compared the same with the original—such copy to be filed with the registrar—and all other instruments, excepting wills, shall be registered by the deposit of the original instrument, or by the deposit of a duplicate or other original part thereof, with all the necessary affidavits.

How registered.

36 V. c. 13, s. 9.

Will to be registered at full length.

45 Vic., cap. 13, sec. 1.

Cap. 60.

When required to swear to.

Affidavit to be made on instrument.

Separate executions to be sworn to separately.

Insufficient description of witness or clerical error not to invalidate registration of instrument.

Retrospective application.

16. Every will shall be registered at full length by the production of the original will, and the deposit of a copy thereof with an affidavit sworn to by one of the witnesses to the will, proving the due execution thereof by the testator, or by the production of probate or letters of administration with the will annexed, or an exemplification thereof, under the seal of any court in this Province, or in Great Britain or Ireland, or in any British province, colony, or possession having jurisdiction therein, and by the deposit of a copy of such probate, or letters of administration, with an affidavit verifying such copy.

17. In the case of an instrument other than a will, a subscribing witness to such instrument, shall in an affidavit setting forth in full his name, place of residence and addition or calling in full, swear to the following facts:

- (1) To the execution of the original and duplicate, if any there be;
- (2) To the place of execution;
- (3) That he knew the parties to such instrument, if such be the fact; or that he knew such one or more of them, according to the fact;
- (4) That he is a subscribing witness thereto.

18. The said affidavit shall be made on the said instrument, or securely attached thereto; and such instrument and affidavit shall be copied at full length in the registry book.

19. When any instrument is executed by one or more grantors, but not by all of them in presence of the same witness or witnesses, or by one or more of the other parties thereto in presence of another witness or other witnesses, then in such case the witness or one of the witnesses, whether the same be so executed in the same or in different places, shall make an affidavit, in accordance with the seventeenth section of this Act, as to each separate and distinct execution of the instrument before the same shall be registered.

(a) No registration under this Act of any instrument shall be deemed or adjudged void or defective by reason of the name, place of residence, addition, occupation, or calling of the subscribing witness thereto, not being set forth in full, or being improperly or insufficiently given or described in the affidavits mentioned in and required by section seventeen, nor by reason of any clerical error or omission of a merely formal or technical character, in such affidavit, but, nevertheless, it shall continue to be the duty of every registrar not to register any instrument except on such proof as is required by this Act.

(b) The preceding sub-section shall apply retrospectively in all cases except those in respect of which litigation has already been commenced.

45 Vic. cap. 13, sec. 3.

See note *re Farmers & Conklin, and Renwick & Berryman*, page 126 *infra*.

20. Every affidavit made under the authority of this Act may be made before any of the following persons :
- (1) If made in Manitoba, it may be before—
 The registrar or deputy-registrar of the county in which the lands lie;
 Or before a judge of any of the superior or county courts;
 Or before a commissioner authorized by any of the courts to take affidavits;
 Or before any justice of the peace.
- (2) If made in any of the other Provinces of the Dominion, it may be made before—
 A judge, or prothonotary of any of the superior courts of law or equity;
 Or before any notary public, certified under his official seal;
- (3) If made in Great Britain or Ireland, or any of the Provinces of the Dominion, it may be made before—
 A judge of any of the superior courts of law or equity therein;
 Or before a judge of any of the county courts within his county;
 Or before the mayor or chief magistrate of any city or borough or town corporate therein, and certified under the common seal of such city, borough, or town corporate;
 Or before any notary public, certified under his official seal;
 Or before a commissioner for taking affidavits outside the Province to be used therein;
- (4) If made in any British colony or possession, it may be made before—
 A judge of a court of record;
 Or before the mayor of any city, borough or town corporate, and certified under the common seal of such city, borough or town;
 Or before any notary public, certified under his official seal;
- (5) If made in the British possessions in India—
 Before any magistrate or collector, certified to have been such under the hand of the governor of such possession;
- (6.) If made in any foreign country, it may be made before—
 The mayor of any city, borough or town corporate of such country, and certified under the common seal of such city, borough, or town corporate;
 Or before any consul or vice-consul of Her Majesty, resident therein;
 Or before a judge of a court of record, or a notary public, certified under his official seal;

Affidavit,
before
whom
made, in
Manitoba.

44 Vic., cap.
11, sec. 66.

Cap. 60.
Other Pro
vinces of
the Do-
minion.

Great Bri-
tain or Ire-
land.

45 Vic. cap.
13, sec. 4.

Cap. 60.
British
Colony.

India.

Foreign
country.

(7) If made in the North-West Territories of the Dominion of Canada, or in the District of Keewatin, it may be made before—

A judge of any court or a police magistrate, or before a commissioner authorized to take affidavits by any court, or before any notary public, certified under his official seal, or any justice of the peace; and all instruments heretofore registered on any such affidavit are hereby declared to have been duly registered.

Notarial and protho-
notarial
copies of
instrument
executed in
Quebec to
be regis-
tered.

21. Every notarial copy of any instrument executed in Quebec, the original copy of which is filed in any notarial office according to the law of Quebec, and which cannot therefore be produced in Manitoba, (a) and every prothotonotarial copy of any instrument executed in Quebec, shall be received in lieu of and as *prima facie* evidence of the original instrument, and may be registered and treated under the Act for all purposes as if it were, in fact the original instrument, and such notarial or prothotonotarial copy shall be registered without any other or further proof of the execution of the same, or of the original thereof; any judgment of any competent court which may be registered under the provisions of this Act, shall be sufficiently proved to be authentic: provided that the seal of such court be affixed thereto and that the same be signed by the proper officer of any such court.

(a) In the Province of Quebec the Notarial Profession are an incorporated body enjoying extensive privileges with respect to conveyancing, etc., and the custody of formal instruments executed before them.

Witness to
make proof
of execu-
tion on be-
ing tend-
ered expen-
ses.

22. Every subscribing witness shall be compellable, when necessary, by order of a judge of the court of Queen's Bench or county court, to make affidavit or proof of the execution of any instrument for the purpose of registration under this Act, and to do all other acts necessary for the same purpose, upon being paid or duly tendered his reasonable expenses therefor.

Proof made
by affida-
vit, affir-
mation or
declara-
tion.

23. The proof may be either by affidavit or by affirmation or declaration, when by the law of the country where such proof is made, an affirmation or declaration may be substituted for an affidavit, and the registrar may receive such instruments so proved without any other or further proof of their due execution.

Name of
witness to
be in his
own hand-
writing.

24. None of the persons authorized to take affidavits by this Act shall take any affidavit of the execution of any instrument, in case he is a party to such instrument, and no one who is a party to the instrument shall make such affidavit, provided that any instrument executed before this Act takes effect may still be registered on the affidavit of a party thereto, but in such affidavit the witness shall swear that the said instru-

ment was executed before the date at which this act takes effect; nor shall any such affidavit of the proof of any instrument executed hereafter, be taken from any witness, unless such witness has subscribed his name in his own handwriting as such witness.

25. When the witnesses to any instrument are dead or are out of this Province, any person who is or claims to be interested in the registration of the instrument, may make proof before the judge of any court in Manitoba, or before the Judge of any Superior Court of Record in any other Province of the Dominion or any portion of the British Empire of the execution of such instrument, and upon a certificate endorsed on such instrument and signed by such judge, that the judge is satisfied by the proof adduced of the due execution of the instrument, the registrar shall register such instrument and certificate.

Compare sec. 75 *post*.

26. The seal of any court affixed to any instrument in writing of itself, and the seal of any corporation affixed to any such instrument, with the signature of the secretary presiding, or other authorized officer thereof and in case of certificates of tax sale the signature of the Treasurer of the municipality or other officer, authorized thereunto, shall be sufficient evidence of the due execution of the instrument by the judge, registrar clerk, treasurer of municipality or other authorized officer of the court signing the same, or by the corporation respectively, for all purposes respecting the registration thereof and no further evidence or verification of such execution shall be required for the purpose of a registration.

27. When any instrument is registered, the registrar (a) shall deliver a certified copy or copies of such instrument, certified under his hand and seal of office, as may be required of him, and of all documents connected with or relating to the same; in which certificate he shall declare the time, place, and other particulars of registration as in other cases under this Act; and he shall also declare that the copy which he so delivers is a true copy of the instrument and of all the other documents connected with or relating to the same of which they respectively purport to be copies, and that the originals have been duly deposited in his office according to the statute in that behalf.

(a) That is, the registrar of deeds under the "old system."

28. Every copy of an instrument so certified as aforesaid, may be registered in any other registry office (a) by deposit thereof, without production of the original instrument, and without proof of any kind other than the production of the copy so certified as aforesaid.

(a) That is, offices under the "old system."

Certified
power of
attorney to
be received
as *prima*
facie evi-
dence.

29. Every copy of original instrument, so certified as in the next preceding section mentioned, shall be received in all cases in place of the original as *prima facie* evidence of the original instrument and of the due execution thereof.

Compare sec. 147 *post*.

By-law to
be regis-
tered.

39. All by-laws hereafter to be passed by any municipal council, under the authority of which any street, road, or highway shall be opened on any private property, shall, before the same becomes effectual in law, be duly registered in the registry office of the county where the land is situate; and for the purpose of registration a duplicate original of such by-law shall be made out certified under the hand of the clerk, and the seal of the municipality, which may be registered without any further proof.

The receipt and actual registration in fact of an instrument without any affidavit does not bind parties with implied notice under the Lands Registration Act of Manitoba; (a) and under the wording of section 17 of that Act it appears quite as necessary that the affidavit should set forth the name, place of residence, and addition or calling of the witness, as that there should be an affidavit. Where the addition or calling of the subscribing witness is not set forth in the affidavit of execution, its omission renders the registration invalid, and parties would not be affected with implied notice. (b) Under the new system no such irregularities can invalidate a registration, but any person deprived of property on account of any such action of the registrar, might recover compensation in an action against the person through whose fraud or wrongful act he suffered the loss, or against the District Registrar upon the *fiat* of the Attorney General; (c) and in certain cases the assurance fund might be made liable for damages. (d) In a case where a document had been improperly received by the Registrar General and placed on the register, it was

(a) *Farmers and Traders Loan Co. v. Conklin*, 1 Man. L. R. 181.

(b) *Renwick v. Berryman*, 3 Man. L. R. 387.

(c) Sec. 132 *post*.

(d) Sec. 134 *post*.

held (Taylor, C.J.) that the Court had no power to order its removal from the files upon an application in Chambers, (e) but in a case of fraud or error it would be lawful for a Judge in Chambers to make an order or decree which the registrar would carry into effect, (f) and there is nothing in the Act to affect the jurisdiction of a competent Court on the ground of fraud or over contracts respecting lands, or over equitable interests therein when properly seized of the case. (g)

In *Re Scarry and Joyce* it was held (Bain, J., April, 1889) in Chambers that where an Administrator brings an action and fails, costs can only be given against the Administrator personally, and not against the estate, and that in an action not stated to have been brought as administrator, which had been dismissed with costs, a certificate of the judgment issued and filed in the Land Titles Office against the estate of the deceased could not bind the lands where the action was brought by the administrator after the death of the intestate, and an order was made requiring the Registrar General to remove the judgment from the register as a charge upon the said lands.

75. When the witness to any instrument is dead or is out of this Province, any person who is or claims to be interested in the registration of the instrument, may make proof before a Judge in Manitoba, or before the Judge of any Superior Court of Record in any other Province of the Dominion or any portion of the British Empire of the execution of such instrument, and upon a certificate endorsed on such instrument and signed by such Judge, that the Judge is satisfied by the proof adduced of the due execution of the instrument, the District-Registrar shall register such instrument and certificate.

Compare sec. 25 Land "Registration Act of Manitoba," recited above under sec. 74. The proofs should be made in the Judge's presence.

(e) *Galt v. Kelly*, 5 Man. L. R. 224.

(f) Sec. 123 *post*.

(g) Sec. 129 *post*.

Manner of
registration.

76. Whenever the memorial of any instrument has been entered in the Register Book, the District-Registrar shall, except in the case of transfer or other dealing endorsed upon any certificate or other instrument as hereinafter provided, record the like memorial on the duplicate certificate, or other instrument evidencing title to the land intended to be dealt with or in any way affected, unless the District-Registrar shall, as hereinafter provided, dispense with the production of the same; and the District-Registrar shall endorse on every instrument so registered a certificate of the day and hour at which the instrument was entered in the Register Book, and shall authenticate each such certificate by signing his name and affixing his seal thereto, and such certificate shall be received in all courts of law as conclusive evidence that such instrument has been duly registered, without proof of the signature of the District-Registrar.

See Rules 13 to 19, Sch. S, sec. 26 *ante*.

No instrument not substantially in conformity with Act to be registered.

77. The District-Registrar shall have power to reject any instrument appearing to be unfit for registration, and shall not register any instrument purporting to transfer or otherwise deal with or affect land under the new system, except in the manner herein provided for registration under the new system, nor unless such instrument be in accordance with the provisions of this Act as applicable to the new system, but any instrument substantially in conformity with the schedules to this Act, or an instrument of a like nature shall be sufficient, and, except as in this Section mentioned, no instrument shall be effectual to pass any interest in land under the new system or to render such land liable as security for the payment of money as against any *bona fide* transferee of such land, unless such instrument be executed and registered in accordance

Proviso for registration of instrument in old form.

with this Act as applicable to the new system: Provided, however, that where an instrument, in accordance with the forms in use or sufficient to pass an estate or interest in lands under the old system, deals with lands under the new system, the Inspector may, in his discretion in a proper case, direct the District-Registrar to register it under the new system, and when so registered it shall have the same effect as to the operative parts thereof, as, and shall by implication be held to contain all such covenants as are implied in, an instrument of a like nature under the new system, and if it is a mortgage the mortgagee may, for the purpose of foreclosure or sale under the mortgage, elect to proceed either under the provisions of this Act or as if the land were subject to the old system, but in case he proceeds under the provisions of this Act, and the mortgage covers other land not under the new system, he must before doing so bring all the land intended to be foreclosed or sold under the new system.

To contain implied covenants.

Foreclosure or sale proceedings under such instrument.

See notes to secs. 58 and 74 *ante*, and sec. 95 *post*.

This section does not allow the Registrar the liberal discretion as to registration of instruments which was permitted by sec. 37 of the Act of 1885, but taken in connection with the special provisions of this Act relating to the instruments most frequently produced for registration (a) and the discretionary power given to the Inspector, it admits any document sufficient under either system to pass an estate or interest in lands, and makes it effective by adding implied covenants and regulating remedial proceedings.

C. S. M. cap. 60, sec. 14, as amended is as follows:

14. The following instruments and proceedings may be registered, namely:

Cap. 60.
Instruments that
may be registered.

(1) Grants from the crown, deeds, conveyances, assurances, bonds and agreements for the sale or purchase of land, and all other instruments, including sheriffs, deeds of land sold by virtue of their office, certificates or deeds for the sale of lands for taxes, or any instruments in anywise affecting, in law, or in equity, lands in Manitoba;

(2) Powers of attorney under which any deed, conveyance, assurance, discharge of mortgage or other instrument has been or may be executed;

(3) Wills and devices of or affecting any lands;

(4) Certificates of decrees of foreclosure, and all other decrees of proceeding of any Court of record in this Province affecting any title or interest in lands;

46 and 47
Vic., cap. 6,
sec. 4.

(5) Certificate of the filing or dismissal of any bill, answer, or the taking of any proceedings in any courts of record in this Province, on its equity side, where by any title to or interest in lands may be brought in question;

46 and 47
Vic., cap. 6,
sec. 4.

(6) Certificates of satisfaction of mortgages;

(7) All other instruments in the first section of this Act mentioned, and every other instrument affecting lands in Manitoba, in law or equity or otherwise howsoever.

36 V. c. 18, s. 17.

This clause is wide enough to admit of the registration of any documents, even sub-leases on such an order made by the Inspector under the discretionary power with which he is invested.

(a) See secs. 45, 57, 69, 70, 72, 79, 81, 82, 86, 87-108, 110-117, 123, 130, 131, 133 and 142; also notes to sec. 144 *post*.

Compare 49 Vic. cap. 22, secs. 3-5. The Victorian Act provides for the registration of Sheriff's deeds (sec. 106, and Sch. 15), but here no such case is included unless covered by this section. See also in same schedule the form of a transfer under decree or order of the Court.

Under the Act of 1885, all lands patented between the 1st July, 1885 and 18th May, 1888 were without an application or other action on the part of the owner subject to the provisions of the new system, but it was held (*Re Irish*, 2 Man. L. R. 361) that in respect to such lands, conveyances in the statutory form might be treated as substantially in conformity with the forms given in the Act. In this case (*id.* 367) Mr. Justice Dubuc expressed the opinion that instruments in the ordinary form executed before the issue of a certificate of title should have the usual effect they purport to have, but clearly they must be registered in order to be operative where the lands have been the subject of an application. Chief Justice Taylor said in delivering his judgment, (*id.* 372) that in the case of lands *not brought under the Act*, instruments according to its forms derived no meaning, force or effect from its provisions, and had no other effect than the words used would have as ordinary words. Mr. Justice Killam held (*id.* 373) that the application had the effect of *bringing the lands under the Act*, and that after it was made no instrument could affect the lands until duly registered under its provisions. See notes to sec. 59 Territorial Act, *post*.

The Inspector can now by an order under this section set many questions at rest by giving statutory effect to instruments which might under ordinary circumstances occasion still greater difficulties of construction than those noted in *Re Irish*. His power extends to instruments containing no specific descriptions as well as to those wherein the lands are described—and not the least of the difficulties are those

Victorian Act
(sec. 106, and
unless covered
the form of a

likely to follow the registration of instruments affecting lands partly under the new and partly under the old system.

78. Should two or more instruments executed by the same person and purporting to affect the same estate or interest be at the same time presented to the District-Registrar for registration, he shall register that instrument which shall be presented by the person producing to him the certificate or other instrument evidencing title to such estate or interest. Where two or more instruments presented at same time.

The person acquiring an interest should insist upon the certificate being produced for the registration of his instrument.

79. Whenever any easement or any incorporeal right in or over any land under the new system is created for the purpose of being annexed to or used and enjoyed together with other land under the new system, the District-Registrar shall also enter a memorial of the instrument creating such easement or incorporeal right upon the folium of the Register Book, constituted by the existing certificate of title of such other land. Registration of easement.

This section relates to easements appurtenant, and does not include ways in gross. Compare sec. 64 of the Victorian Act, and the decision in *Ex parte Johnston*, 5 W. W. & A'B. (L) 55. At page 240 of A'Becket's *Transfer of Land Statute*, it is suggested that upon the acquisition of an easement, it would be proper for the owner to surrender the certificate of title and apply for a new one shewing the easement, as in Victorian. No certificate can issue for an easement only. Rules of the Victorian office noted at the page referred to; forms of clauses to create easements, *id.* p. 213; and form of surrender of easement, *id.* p. 282.

80. In every instrument transferring an estate or interest in land under the new system, subject to mortgage or encumbrance, there shall be implied unless otherwise expressed, (a) the following covenant by the transferee, that is to say: That such transferee will pay the interest, annuity or rent charge secured by such mortgage or encumbrance, after the rate and at the time specified in the instrument creating the same, and will indemnify and keep harmless the transferror from and against the principal sum or other moneys secured by such instrument, and from and Implied covenants in transfer of estate subject to mortgage.

against all liability in respect of any of the covenants therein contained or under this Act implied, on the part of transferror. (b)

Compare secs. 88, 89, 91, 96 and 99 *post*, also Victorian Act, secs. 51, 58, 63, 78, 79, 90, 91 and 110. As to estoppel by covenants, sec. 46 & 47 Vic. cap. 28.

(a) Implied covenants may be modified by the terms of the instrument and are to be construed as against parties to the instrument severally not jointly. See sec. 144 *post*.

(b) See sec. 145 *post*, as to obligation of an owner to allow the use of his name in suits.

A similar covenant would be implied in equity on the conveyance of any similar estate. (*Waring v. Ward* 7 Ves., 336, 337.)

In *Australian Deposit and Mortgage Co. v. Lord*, 2 V.L.R. (L) 31, the meaning of implied covenants is discussed, and it was held that the object of the Act was not to create a new liability, but to make the transferee liable to covenants running with the land, and that the transferee did not become personally liable.

The Act of 1885, by sec. 90, which has been omitted in the present Statute provided an implied covenant on the part of the mortgagor, that he would keep buildings and improvements in repair, and that the mortgagee might enter at all reasonable times to view and inspect the state of repair.

Instrument purporting to pass estate to confer on transfer right to registration.

Power of D. R. in the premises.

81. Every instrument signed by a proprietor or others claiming through or under him, purporting to pass an estate, or interest in land, for the registration of which provision is made by this Act, shall, until registered, be deemed to confer upon the person intended to take under such instrument, or others claiming through or under him, a right or claim to the registration of such estate or interest; and the District-Registrar, upon application made for that purpose by any person other than the person immediately claiming under or in respect of the instrument signed by a proprietor, may either reject such application altogether, or may direct the applicant to be registered as proprietor of the land, estate or interest forthwith, or at the expiration of some defined period of time, and may further direct

such other entries to be made in the Register Book and such notices to be served as may be, in his opinion, necessary; Provided always, that on registering any such applicant the District-Registrar shall, so far as possible, enter the like memorial of every instrument produced by the applicant which may confer the right or claim aforesaid, as if such instrument had been duly presented for registration in its proper order of time, and the duplicate certificate of title shall be delivered up, and the like memorials, or other entries made thereon; and provided also, that no such registration shall be made if it would interfere with the right of any person claiming under any instrument previously registered under the new system.

See South Australian "Torrens' Act" (1885) sec. 258; Queensland Real Property Act of 1877, sec. 48. See also secs. 74 and 77 *ante*.

Mr. Gawlor, who settled the South Australian Consolidating Bill in 1885, states that this provision was first contained in his amending Act in the year 1878, and was rendered necessary on account of the Supreme Court having decided that neither contracts nor equities could be enforced against a person who had entered into or created such contracts or equities, even although the land still remained in his name as registered owner; and as no estate or interest passes except upon registration, power was given to register as owner a person who derived title through unregistered instruments, which ought to have been filed in regular order, but which were never actually so registered. For instance, without this provision, if the registered owner executed a transfer, and the transferee died before having had it placed on the register, his representatives would take nothing, as the transferee could only take the estate upon becoming its registered owner, and therefore had nothing to transmit. See Jones' *Torrens' System*, 279.

§2. Upon the transfer of any land, estate or interest, under the new Transfer to system, to two or more persons as joint owners to be held by them as joint owners as trustees, it shall be lawful for the transferor to insert in the memorandum of transfer or other instrument the words "no survivorship"; and the "No survivorship." District-Registrar shall in such case include such words in the memorial

of such instrument to be entered by him in the Register Book as herein-before directed; and shall also enter the said words upon any certificate of title issued to such joint owners pursuant to such memorandum of transfer; and any two or more persons registered as joint owners of any land, estate or interest, under the new system, held by them as trustees, may, by writing under their hand, authorize the District-Registrar to enter the words "no survivorship" upon the certificate of title, or other instrument evidencing their title to such estate or interest, and also upon the duplicate of such instrument in the Register Book or filed in his office, and after such entry has been made and signed by the District-Registrar in either such case as aforesaid, it shall not be lawful for any less number of joint proprietors than the number then registered to transfer or otherwise deal with the said land, estate or interest, without obtaining the sanction of the court or a judge thereof by an order on motion or petition.

Less number not to deal with land except by order of court or judge.

Compare 46 and 47 Vic. cap. 25.

As to tenants in common, see sec. 62 *ante*.

The insertion of these words is a precaution for the protection of *cestui que trusts*, as it is probable that none but trustees will be required to hold lands under joint proprietorship.

Court or judge may cause notice to be advertised.

83. Before making any such order as aforesaid, the court or a judge thereof shall, if it seems requisite, cause notice of intention so to do to be properly advertised, (a) and shall appoint a period of time within which it shall be lawful for any person interested to show cause why such order should not be issued; and thereupon it shall be lawful for the said court or judge in such order to give directions for the transfer of such land, estate or interest to any new owner or owners, solely or jointly, with or in the place of any existing owner or owners, or to make such order in the premises as the court or judge thinks just for the protection of the persons beneficially interested in such land estate or interest, or in the proceeds thereof; and upon such order being deposited with the District-Registrar he shall make such entries, and upon such entries being made, the executors or administrators, or the curator (b) of intestate estates, as the case may be, shall be deemed to be the registered owner or owners of such mortgage, encumbrance or lease; and the District-Registrar shall note the fact of such registration by memorandum under his hand on the letters of administration, probate, or other instrument as aforesaid.

Effect of order.

(a) *Vide* C. S. M. cap. 7 sec. 73.

(b) This office does not exist in Manitoba.

84. Whenever in any grant or instrument under this Act, any mines or minerals are excepted from the grant or transfer, the District-Registrar, on issuing a certificate of title, shall therein insert the words so used in the grant or instrument. Exception of minerals.

See sec. 63 (a) *ante*.

85. Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer from the registered owner of any registered estate or interest, shall be required or in any manner concerned to inquire into or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest, in question is or was registered, or to see to the application of the purchase money, or of any part thereof, or shall be affected by notice, direct, implied or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any trust of unregistered interest is in existence shall not of itself be imputed as fraud. Except in case of fraud person dealing with registered owner not affected by trusts. Application of money. Notice.

The words "trust of " in the last line but one of this section are evidently intended for the words "trust or."

See secs. 64, 65, and notes *ante*, and the following sec. 86.

86. The District-Registrar shall not make any entry in the Register of any notice of trusts, whether expressed, implied or constructive, but trusts may be declared by any instrument or deed, which instrument or deed may include as well, land under the provisions of the new system as lands which are not under the provisions thereof, provided that the descriptions of the several parcels of the land contained in such instrument or deed shall sufficiently distinguish the land which is under the provisions of the new system from the land which is not under the provisions thereof; and a duplicate or an attested copy of such instrument may be deposited with the District-Registrar for safe custody and reference, but shall not be registered. Notice of trusts not registered. May declare trusts. Trust instrument deposited but not registered.

See sec. 68 (5) *ante*, and secs. 117, 23, 129 *post*.

Compare 49 Vic. cap. 13.

Most of the provisions as to express trusts apply equally to implied trusts, but a person dealing with a trustee without actual notice could not be deprived of any acquired rights except on account of positive dishonesty; it would not be

sufficient that he was merely censurably indifferent to the rights of others. (a)

Trusts and contracts may be enforced against the registered owner as formerly, and he may be wholly or partially deprived of his interests by a Court of Equity, or compelled to apply the proceeds as justice may require. (b)

In Queensland the Royal Commission of Inquiry respecting the working of the Real Property Acts 1861-1877, made the following comments at page 14 of their report presented to both houses of Parliament in 1879.

“29. We think that the system of the Real Property Acts with respect to property held by trustees is unsatisfactory and dangerous. It not only does not impose, but practically forbids the imposition of, any safeguards against fraud. Two methods of dealing with this matter appear to be practicable.”

“(1) To provide for the lodging by a *cestui que trust* of a perpetual caveat against any dealing with the land by the trustee; (2) To state the trusts on the face of the instrument of titles, and (3) To notify by memorandum endorsed upon it the existence of trusts. The first of these methods, which has very lately been adopted in New South Wales, appears to us unsatisfactory. The second and third are, no doubt, open to the objection that on any dealing with land by a trustee, the Registrar-General or Master of Titles would be charged with the duty of seeing that the dealing was within his powers. This duty, however, he performs at present in every case in which land which has been settled upon trust is sought to be brought under the Act, and in many cases of transmission of title by will, and we can see no reason why he should not

(a) *Robertson v. Keith*, 1 Vict. Repts. Eq. 11; *Colonial Bank of Australasia v. Pie*, 6 V. L. R. (Eq.) 186.

(b) *Maddison v. McCarthy*, 6 Wy. W & A'B. Eq. 151.

exercise the same function in all cases of trusts. We think that this change in the law, while it would effectually prevent frauds by trustees, would not unduly increase the labours of the Master of Titles beyond those which we think ought to be performed by him under the existing law, and we recommend that it be adopted."

Mr. Harding moved, that after the word "trusts," in line 11, the following words be inserted:— "If the method thirdly mentioned be adopted, it would be necessary to repeal such parts of 'The Real Property Acts' as allow trustees to receive certificates of title, and deal with the land as if they were its beneficial owners, and to provide that all certificates of title issued to trustees should be distinguished by memorandum endorsed thereon (for example: "The registered proprietor is a trustee. The trusts are declared by an instrument dated

made between

and

and numbered

"), and that all persons dealing with a proprietor holding a certificate so distinguished, should be deemed to have notice of the contents of the instrument declaring the trusts, and that the Registrar-General on receiving for registration any instrument purporting to deal with such land, should, before registering it, refer to the instrument declaring the trust; and if such dealing should not be authorized thereby, he should forthwith enter up a caveat in the names of the beneficiaries forbidding the registration of such instrument, which caveat should have precedence of the application to register such instrument."

87. When any land under the new system is intended to be leased or demised for a life or lives, or for any term of years exceeding one year, the owner shall execute a lease in the form contained in Schedule E to this Act, and every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of title of the land, or

Form of
lease for
term ex-
ceeding
one year.

Covenant
to purchase by
lessee.

Proviso as
to lands encum-
bered.

shall give such other description as may be necessary to identify such land; and a right for, or covenant by the lessee, to purchase the land therein described may be stipulated in such instrument, and in case the lessee pays the purchase money stipulated, and otherwise observes his covenants expressed and implied in such instrument, the lessor shall be bound to execute a memorandum of transfer to such lessee of the said land, and to perform all necessary acts, by this Act prescribed, for the purpose of transferring land to the purchaser: Provided always, that no lease of land, subject to any prior registered mortgage or encumbrance, shall be valid and binding against the mortgagee or encumbrancee, unless such mortgagee or encumbrancee shall have consented to such lease, prior to the same being registered.

See secs. 92, 93 and 94 *post* as to consent to surrender.

Provisions as to implied covenants are set out in secs. 88, 89 and 144 *post*. See sec. 91 *post* as to short forms of covenants. As to seal, see note to sec. 144 *post*.

Leases may be transferred, see sec. 98 *post*, with forms following.

As to covenants operating as estoppel, compare 46 and 47 Vic. cap. 28.

The effect of a lease as an encumbrance mentioned in a certificate of title is discussed by Molesworth, J., in the case of *Shaw v. Scott*, 3 A. J. R. 16, 17.

Leases in statutory short form may be filed before the issue of a certificate of title, *vide* sec. 95 *post*.

SCHEDULE E.

FORM OF LEASE.

I, A. B., being registered as owner, subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or endorsed thereon) of that piece of land (*describe it*) part of

Section	Township	Range	containing
			acres more or less (<i>here state the rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title or lease, refer thereto for description and diagram, otherwise set forth the boundaries by metes and bounds</i>) do hereby lease to E. F., (<i>here insert description,</i>) all the said lands, to be held by him, the said E. F., as tenant

for the space of _____ years from (here state the date and term) at the yearly rental of \$ _____ payable (here insert terms of payment of rent,) subject to the covenants and powers implied (also set forth any special covenants or modifications of implied covenants.)

I, E. F., (here insert description) do hereby accept this lease of the above described lands, to be held by me as tenant and subject to the conditions, restrictions, and covenants above set forth.

Dated at this _____ day of, etc.,

Signed by above-named A. B., as lessor, and E. F., as lessee, this _____ day of _____ 18 _____ in the presence of _____ X. Y.	(Signature of Lessor.) (Signature of Lessee.)
---	--

(Here insert memorandum of mortgages and encumbrances.)

Memo:—See note to Schedule B, sec. 72 *ante*. See also Schedules F and G, sec. 98 *post*.

88. In the memorandum of lease, unless a contrary intention appears Implied therein, there shall be implied the following covenants by the lessee, that ^{covenants} by lessee. is to say:

(1) That he will pay the rent thereby reserved at the time therein ^{Payment} mentioned, and all rates and taxes which may be payable in respect of ^{of rent.} the demised property during the continuance of the lease.

(2) That he will at all times during the continuance of the said lease ^{Repairs.} keep, and at the termination thereof, yield up, the demised property in good and tenantable repair, accidents and damage to buildings from fire, lightning, storm and tempest, and reasonable wear and tear, excepted.

See sec. 91 *post*, as to short form covenants and note to sec. 87 as to estoppel.

All implied covenants may be modified and are construed as binding severally; see sec. 144 *post*, and note.

See as to repairs 47 Vic. cap. 29.

89. In any memorandum of lease, unless a different intention appears Implied therein, there shall also be implied the following powers in the lessor, ^{power in} lessor. that is to say:

(1) That he may, by himself or his agents, enter upon the demised pro- Entry to
perty and view the state of repairs thereof, and may serve upon the ^{view state} of repairs.

lessee, or leave at his last or usual place of abode, or upon the demised premises, a notice in writing of any defect, requiring him within a reasonable time, to be therein mentioned to repair the same.

To take possession for breach of covenants.

(2) That in case the rent or any part thereof is in arrear for the space of two calendar months, or in case default shall be made in the fulfillment of any covenant, whether expressed or implied, in such lease on the part of the lessee, and shall be continued for the space of six calendar months, or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified, such lessor may enter upon and take possession of such demised premises.

See secs. 90, 91, 114 and 144 *post*, and notes.

A personal representative must be registered as owner before proceeding to exercise any powers vested in the lessor under this section.

As to repairs see 47 Vic. cap. 29, and 46 & 47 Vic. cap. 28, as to estoppel.

Duty of D. R. in case of re-entry.

90. In any such case the District-Registrar, upon proof to his satisfaction of lawful re-entry and recovery of possession, by a lessor, shall note the same by entry into (*sic*) the Register, and the estate of the lessee in such land shall thereupon determine, but without releasing the lessee from his liability in respect of the breach of any covenant in such lease expressed or implied, and the District-Registrar shall cancel such lease if delivered up to him for that purpose.

Compare provisions of "The Overholding Tenants' Act," as to landlord regaining possession of leased premises

Conditions implied in lease or mortgage under Act.

91. Whenever in any lease or mortgage registered under the new system, any of the forms of words in column one of the form contained in Schedule N to this Act and distinguished by any number therein are used, such lease or mortgage shall be taken to have the same effect and be construed as if there had been inserted therein the form of words contained in column two of the same Schedule and distinguished by the same number; and every such form shall be deemed a covenant by the covenantor with the covenantees and his transferees, binding the former and his heirs, executors, administrators and transferees, but it shall not be necessary in any such lease to insert any such number. There may be introduced into or annexed to any of the forms in the first column any expressed exceptions from or expressed qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from, or in the corresponding forms in the second column.

Compare C. S. M. cap. 61, Schedule 3; and 46 and 47 Vic. cap. 28, as to estoppel.

See secs. 80, 88 and 89 *ante*, and see. 144 *post*. *Quere*, if the last clause of see. 144 *post*, as to implied covenants being several, could influence the construction of the following schedule; and as to necessity of seals:

SCHEDULE N.

1. The said covenantor covenants with the said covenantee.

(*Seemle: That he will not assign or sublet without leave.*)*

2. That he will erect such fences as are mentioned in the said section.

3. That he will perform the conditions of the covenants as required.

1. The covenantor, his executors, administrators, or transferees, will not, during the said term, transfer, assign, or sub-let the premises hereby leased, or any part thereof, or otherwise by any act or deed procure the said premises, or any part thereof, to be transferred or sub-let, without the consent in writing of the lessor or his transferees had and obtained.

2. The covenantor, his executors, administrators, or transferees will, during the continuance of the said term, erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.

3. The covenantor, his executors, administrators, or transferees will, at all times during the said term, cultivate, use, and manage in a proper husbandlike manner all such parts of the land as are now or shall hereafter with the consent in writing of the said lessor or his transferees, be broken up or converted into tillage, and will not impoverish or waste the same.

*NOTE: These words in italics are omitted in the Act.

92. Whenever any lease or demise which is required to be registered under the new system is intended to be surrendered, and the surrender

Surrender effected otherwise

than by
operation
of law.

thereof is effected otherwise than through the operation of a surrender in law, or than under the provisions of any law relating to bankrupt estates, there shall be endorsed upon such lease or counterpart thereof the word "surrendered," with the date of such surrender, and such endorsement shall be signed by the lessee and the lessor as evidence of the acceptance thereof, and shall be attested by a witness and the District-Registrar shall thereupon enter in the Register a memorial recording the date of such surrender, and shall likewise endorse upon the lease a memorandum recording the fact of such entry having been so made in the Register, and upon such entry having been so made, the estate or interest of the lessee in such land shall vest in the lessor or in the person in whom, having regard to intervening circumstances, if any, the said land would have vested if no such lease had ever been executed, and the production of such lease or counterpart bearing such endorsed memorandum, shall be sufficient evidence that such lease has been so surrendered: Provided

Proviso.

that no lease subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.

Compare sec. 87 *ante*, as to consent.

See sec. 81 *ante*, as to intermediate dealings.

Assign-
ment of
lessee for
benefit of
creditors
where land
not subject
to encum-
brance.

93. Upon any assignment being made by any lessee for the benefit of his creditors, the District-Registrar, unless the land be subject to a mortgage or encumbrance under the provisions of this Act, shall, upon the application in writing of the lessor, accompanied by a statement in writing signed by the assignee or trustee under such assignment, certifying his refusal to accept such lease, or shall, upon the order of the court on the application of the lessor, enter in the Register a note of such refusal or order, and such entry shall operate as a surrender of such lease.

See sec. 87 and notes *ante*.

Assign-
ment by
lessee for
benefit of
creditors
where land
subject to
encum-
brance.

94. Upon any assignment for the benefit of his creditors being made by any lessee or owner of any land registered, where the land is subject to mortgage or encumbrance, the District-Registrar shall, upon the application in writing of the mortgagee or encumbrancee, accompanied by a statement in writing signed by the assignee or trustee of such lessee or owner, certifying his refusal to accept such lease, enter in the Register Book a note of such application and refusal, and such entry shall vest the interest of the lessee in such lease in such mortgagee or encumbrancee; and if such mortgagee or encumbrancee shall neglect or decline to make such application as aforesaid, the District-Registrar upon application by the lessor, and proof of such neglect or refusal, and of the matters aforesaid, shall enter in the Register Book notice of such neglect or refusal

of such assignee to accept such lease, and such entry shall operate as a surrender of such lease.

See sec. 87 and notes *ante*.

MORTGAGES AND ENCUMBRANCES.

95. Any mortgage or other encumbrance created by any party right-fully in possession of lands prior to the issue of the certificate of title may be filed in the office of the District-Registrar, who shall endorse upon the certificate of title and duplicate thereof a memorandum of such encumbrance, and when so entered and endorsed the said mortgage or encumbrance shall be as fully valid as if made subsequent to the issue of the certificate of title; and should more than one mortgage or encumbrance be filed, they shall be registered in the order of time in which they have been filed in the office.

Encum-
brance
created
prior to
certificate
may be
filed.

See secs. 74, 76, 77 and 78 *ante*, and notes.

This is almost identical with sec. 139 of the Act revised and consolidated with an extended application adding greatly to its usefulness in facilitating dealings. Such instruments may be in the statutory short forms, or in any form sufficient to pass an estate or interest under the old system, but, as the forms given in this Act are only operative under the statute, they cannot be used under this section or have their statutory effect or meaning until the title to the lands has been registered under the new system; but see sec. 81 *ante*, as to their effect.

Apparently a sub-mortgage or an assignment of a mortgage could not be filed or registered under this section.

As to the effect of a lease as an encumbrance see note to sec. 87 *ante*.

96. Whenever any land or estate, or interest in land, under the new system is intended to be charged or made security in favor of any mortgagee, the mortgagor shall execute a memorandum of mortgage in the form contained in Schedule C to this Act, or to the like effect; and whenever any such land is intended to be charged with or made security for the payment of an annuity, rent charge or sum of money, in favor of any encumbrancee, the encumbrancer shall execute a memorandum of encumbrance in form contained in Schedule D to this Act, or to the

Forms of
mortgages
and encum-
brances.

Estate or
interest
must be
stated.

like effect; and every such instrument shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and shall for description of the land intended to be dealt with, refer to the certificate of title on which such estate or interest is held, or shall give such other description as shall be necessary to identify such land, together with all mortgages or encumbrances affecting the same.

No sealing appears to be necessary by the parties to mortgages or encumbrances. As to limitations see 46 and 47 Vic. cap. 26, secs. 18-23, and compare interpretation of the word "mortgage," sec. 3 (4) *ante*. *Quære*, whether the "covenant" would require a seal. See note to sec. 144 *post*.

As to implied covenants on the part of a transferee of mortgaged premises see sec. 80 *ante*; See secs. 103-106 *post* as to powers of mortgagees; and sec. 109 *post* as to custody of mortgaged certificates of title.

Short form covenants are given in Sch. N, sec. 91 *ante*.

As to covenants operating an estoppel see 46 & 47 Vic. c. 28.

Leases upon mortgaged premises must be consented to by the mortgagee or encumbrancer before registration, (*vide* sec. 87 *ante*) and likewise before they can be surrendered (secs. 92, 93 and 94 *ante*). Mortgages may be transferred wholly or partially, and one portion preferred or deferred to the other (sec. 98), and the mortgagee's rights and privileges pass to the transferee (sec. 99). As to discharges, see sec. 109 *post*, and as to the equitable jurisdiction of the Court, secs. 123 and 129 *post*.

A sub-mortgage executed conformably to the old system can be registered under this Act, see secs. 77 and 81 *ante*; but the original mortgage should be produced for endorsement with a memorial (sec. 76 *ante*).

A second mortgage may be in the same form as a first mortgage, but it should refer to the first mortgage as an encumbrance.

Equitable mortgages may be effected by depositing the certificate of title where it has not been impounded under sec. 109, and could be protected if necessary by caveat (sec. 130 *post*). *London Chartered Bank v. Hayes*, 2 V. R. (E.) 104; 2 A. J. R. 60; *Patchell v. Mannsell*, 7 V. L. R. (E.) 6; and if the caveat is allowed to lapse, notice of the equitable mortgage would not secure the equitable mortgagee if the Registrar chooses to dispense with the production of the certificate of title.

See notes to sec. 68 (1) *ante*.

SCHEDULE C.

MEMORANDUM OF MORTGAGE.

I, A. B., being registered as owner of an estate (*here state nature of interest*), subject, however, to such encumbrances, liens and interests as are by memorandum underwritten (or endorsed hereon), of that piece of land (*description*) part of section township range containing acres, be the same more or less (*here state right of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with does contain all included in the original grants, refer thereto for descriptions of parcels and diagrams, otherwise set forth the boundaries and accompany it by a diagram*) in consideration of the sum of \$ lent to me by E. F. of (*here insert description*) the receipt of which sum I do hereby acknowledge, covenant with the said E. F. :—

Firstly, That I will pay to him, the said E. F., the above sum of \$ on the day of

Secondly, That I will pay interest on the said sum at the rate of on the \$ in the year, by equal payments on the day of and on the day of in every year.

Thirdly, (*Here set forth special covenants, if any.*) And for the better securing to the said E. F. the repayment, in manner aforesaid, of the principal sum and interest, I hereby mortgage to the said E. F. my estate and interest in the land above described.

In witness whereof I have hereunto signed my name this day of

Signed by the above named

A. B. as mortgagor, this day

of in presence of G. H.

(*Signature of Mortgagor.*)

MAN.L.A.A.

MEMO. See note to Schedule "B," sec. 72. For forms of transfer of mortgage see Schedules F and G, sec. 98 *post*.

SCHEDULE D.

MEMORANDUM OF ENCUMBRANCE.

I, A. B., being registered as owner of an estate (*state nature of estate*), subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or endorsed hereon) of that piece of land of (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title, refer thereto for description of parcels and diagrams, otherwise set forth the boundaries and accompany it by a diagram*), and desiring to render the said land available for the purpose of securing to and for the benefit of C. D., of (*description*) the (*the sum of money, annuity or rent charge*) hereinafter mentioned, do hereby encumber the said land for the benefit of the said C. D., with the (*sum, annuity, or rent charge*) of \$, to be raised and paid at the times and in the manner following, that is to say: (*here state the times appointed for the payment of the sum, annuity or rent charge intended to be secured, the interest, if any, and the events on which such sum, annuity or rent charge shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or as remedies given to an encumbrance by this Act*). And subject as aforesaid, the said C. D. shall be entitled to all powers and remedies given to an encumbrancee by "The Real Property Act of 1889."

In witness whereof I have hereunto
signed my name this
day of , in presence } *Signature of Encumbrancer.*
of }

(*Insert memorandum of mortgages and encumbrances.*)

subject to the conditions, restrictions, and covenants above set forth.

Dated this day of etc.,
(*Signature of Encumbrancer.*)
(*Signature of Encumbrancee.*)

Signed by above named A. B.,
as encumbrancer and, E. F.,
as encumbrancee, this
day of
18 , in presence of X. Y. }

MEMO. See note to Schedule B, sec. 72 *ante*; see also Schedules F and G, sec. 98 *post*.

97. Mortgage and encumbrance under the new system shall have effect as security, but shall not operate as a transfer of the land thereby charged. Mortgage and encumbrance not to operate as transfer.

There is no "Grant" effected by this instrument called a "Mortgage" it is actually a hypothec. Section 77 allows instruments in the forms under the old system to be registered in the discretion of the inspector, but so far as its operation affects lands under the new system, it is still merely a hypothec, and the "Grant" passes no estate.

No bill for foreclosure could be filed upon a mortgage in the new form, as the legal title is not in the mortgagee, the procedure in the Act alone can be resorted to in case of default. *Greig v. Watson*, 7 V. L. R. (E) 79; *National Bank of Australasia v. Hand in Hand, etc., Co'y*, 4 App. Cases, P. C. 391, 405.

98. Mortgages, encumbrances and leases may be transferred by a transfer executed in the form contained in Schedule G to this Act or by a separate transfer. The transfer must be registered in the manner hereinbefore set forth, and transferees shall have priority according to the date and time of registration. And any mortgagee may transfer a part of the sum secured by the mortgage by a transfer executed in the form of Schedule H to this Act or by a separate transfer (Schedule F); and the part so transferred shall continue to be secured by the mortgage and may be given priority over the remaining part or may be deferred or may continue to rank equally with it under the security of the original mortgage, as may be stated in the instrument of transfer; and the District-Registrar shall enter on the certificate of title a memorial of the amount of the mortgage so transferred, the name of the transferee, and how the sum so transferred is to rank, and shall notify the mortgagor of the facts. Transfer of encumbrances and leases. Mortgagee may transfer part.

See 49 Vic. cap. 13, as to transfers by personal representatives; cap. 35, sec. 31, as to the seizure and sale of mortgages under execution.

SCHEDULE F.

FORM OF TRANSFER OF A LEASE, MORTGAGE OR CHARGE.

I, _____ of _____ being registered as the owner of a lease (or mortgage or charge, as the case may be, numbered _____ of (or upon) the land hereafter described subject to the encum-

brances notified hereunder in consideration of the sum of
 paid to me by C. D., of do hereby transfer
 to the said C. D. all my estate and interest as such registered owner in
 all that piece of land being (or otherwise according to the
 description in the lease, mortgage or charge) (or hereby transferred to the
 said C. D. \$ of the mortgage or encumbrance as the case
 may be, dated together with all my rights, powers, title
 and interest therein—and the sum so transferred shall be preferred or
 deferred, or rank equally, as the case may be, to the remaining sum
 secured by the mortgage.)

Signed by the said)
 in the presence of)
 Signed by the said C. D.)
 in the presence of)

Encumbrances referred to.

MEMO: See note to Schedule B, sec. 72 *ante*.

SCHEDULE G.

(*Endorse memorandum of mortgages and encumbrances.*)*

FORM OF TRANSFER OF MORTGAGE, ENCUMBRANCE OR LEASE BY ENDORSEMENT.

I, the within mentioned C. D., in consideration of \$ this day
 paid to me by X. Y., of , the receipt of which sum I do
 hereby acknowledge, hereby transfer to him the mortgage [encumbrance
 or lease, *as the case may be*] within written, together with all my rights,
 powers, title and interest therein.

In witness whereof, I have hereunto subscribed my name this
 day of

C. D., *Transferror.*

Accepted, X. Y., *Transferee.*

*MEMO. Evidently the endorsements here referred to
 are those which appear upon the certificate of title as
 having priority over that transferred. Where none exist
 these words may be omitted.

No witness appears to be required in this and the follow-
 ing Schedule, although made necessary in transfers by
 endorsement (sec. 72 *ante*), and endorsed discharges (sec. 100
post). It is probable that in most cases attestation by a
 witness as provided by section 74 *ante*, would be required

before registration although it may be doubted whether such an *endorsement* is an "*instrument*" as interpreted by sec. 3 (12) *ante*.

SCHEDULE H.

FORM OF TRANSFER OF PART OF MORTGAGE OR ENCUMBRANCE BY
ENDORSEMENT.

I, the within named C. D., in consideration of \$ _____ this day paid to me by X. Y., of _____, the receipt of which sum I do hereby acknowledge, hereby transfer to him \$ _____ of the mortgage [or encumbrance, *as the case may be*] within written, together with all my rights, powers, title, and interest therein, and the sum so transferred shall be preferred [or deferred or rank equally, *as the case may be*] to the remaining sum secured by the mortgage.

In witness whereof I have hereunto subscribed my name this _____ day of _____

C. D., *Transferor*.

Accepted X. Y., *Transferee*.

MEMO: No witness appears to be necessary. See note at foot of Schedule G.

99. Upon the registration of any transfer of any mortgage, encumbrance or lease, the estate or interest of the transferor, as set forth in such instruments, with all rights, powers, and privileges thereto belonging or appertaining, shall pass to the transferee, and such transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in such instrument originally as mortgagee, encumbrancee or lessee of such land, estate, or interest.

Upon registration estate of transferor shall pass to transferee.

The transfer is effective only upon registration, see sec. 74 *ante*.

Upon transmission on death or insolvency the personal representative or assignee would require to be registered as owner. See secs. 114 and 115 *post*.

As to implied covenants, see secs. 80, 88, 89 and 91 *ante*. Compare also sec. 89 of the Real Property Act of 1885, which has been omitted in the present Act. It made provision as to suits by transferees.

Registration of discharge.

100. Upon the production of any memorandum of mortgage or encumbrance, having thereon an endorsement signed by the mortgagee or encumbrancee, and attested by a witness, (a) or of any separate memorandum of discharge of mortgage, duly executed, discharging the land from the whole or part of the principal sum or annuity, secured, or discharging any part of the land comprised in such instrument from the whole of such principal sum or annuity, the District-Registrar shall make an entry in the Register, noting that such mortgage or encumbrance is discharged wholly or partially or that part of the land is discharged as aforesaid, as the case may require: and upon such entry being so made, (1) the land or the estate or interest in, or the portion of the land mentioned or referred to in such endorsement or memorandum of discharge as aforesaid, shall cease to be subject to or liable for such principal sum or annuity, or (*as the case may be*), for the part thereof noted in such entry as discharged. (b)

(a) See sec. 74 *ante*, as to manner of attestation and when it becomes effective by registration.

(b) See secs. 123 and 129 as to jurisdiction of the court to order a discharge.

Compare 49 Vic. cap. 13, secs. 5-7, and cap. 22, secs. 3-5.

The provisions of the Lands Registration Act of Manitoba as to discharges are as follows:—

Cap. 60.

Certificate of discharge of mortgage to be registered.

36. When any registered mortgage shall have been satisfied, the Registrar, on receiving a certificate executed by the mortgagee, or if the mortgage has been assigned and such assignment registered, then executed by such assignee, or by such other person as may be entitled by law to receive the money and to discharge such mortgage, in the form D to this Act, or to the like effect, executed in the presence of one witness, and duly proven by the oath of the subscribing witness thereto, in the same manner as herein provided for the proof of other instruments affecting lands, shall register the same and every affidavit attached thereto or endorsed thereon, at full length in its proper order, in the Registry Book, and numbering it in like manner as other instruments are required to be registered and numbered, and also by writing in the margin of the Register wherein the said mortgage has been registered, words to the following effect: “——— see certificate purporting to be discharge, signed by ——, (*naming the person who has executed the same*)” and “see registry number —— of such certificate, —— book (*stating the same according to the fact*)” and to which marginal entry the Registrar or his deputy shall affix his name, and the same shall be deemed a discharge of such mortgage; and such certificate so registered shall be

valid and effectual in law as a release of such mortgage, and as a conveyance to the mortgagor, his heirs, or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgage.

FORM D.

(Sec. 36, cap. 60, C. S. M.)

To the Registrar of the county of

I, _____, of the _____, do certify that
 hath satisfied all money due on, or to grow due on (or hath satisfied the
 sum of \$ _____ mentioned in) a certain mortgage made by
 of _____ to _____ which mortgage bears date the
 day of _____ 18 _____, and was registered in the
 registry office for the county of _____ on _____ day of
 18 _____, at _____ minutes past _____ o'clock of the
 noon, in Liber _____ as No. _____ (here mention the day and
 date of registration of each assignment thereof, and the names of the parties,
 or mention that such mortgage has not been assigned, as the fact may be), and
 that I am the person entitled by law to receive the money, and that such
 mortgage, (or such sum of money as aforesaid, or such part of the lands as is
 herein particularly described, that is to say: _____) is therefore
 discharged.

Witness my hand this _____ day of _____ 18 _____

One witness. _____)
 _____)
 _____)

See form of affidavit sec. 74 ante.

37. In case the mortgagee or any assignee of the mortgagee, desires to Partial re-
 release or discharge part only of the lands contained in such mortgage, lease of
 or to release or discharge only part of the money specified in the mort- mortgage
 gage, he may do so by deed or by a certificate to be made, executed, to be regis-
 proven and registered in the same manner as in cases where the whole tered.
 lands and mortgage are wholly released and discharged; and such deed
 or certificate shall contain as precise a description of the portion of lands
 so released or discharged as would be necessary to be contained in an
 instrument of conveyance for registry under this Act, and also a precise
 statement of the amount or particular sum or sums so released or
 discharged.

38. Every certificate of payment or discharge of the mortgage, or of Certificate
 the conditions therein, or of the lands or of any part of the same, or of of payment
 or dis-

charge
valid.

any part of the money, by the mortgagee, or his assignee, his heirs, executors, administrators or assigns, or any one of them, at whatsoever time given, and whether before or after the time limited by the mortgage for payment or performance, shall be valid, if in conformity with this Act to all intents and purposes whatsoever as herein mentioned.

Compare sec. 84 Real Property Act, 1885, as to proof of payment being sufficient to authorize discharge.

It does not now appear to be within the power of the District-Registrar to enter a discharge of mortgage unless all formalities are complied with, as to execution, attestation, etc., nor could the Inspector allow it to be received unless it amounted to a "release" of the lands, as sec. 77 *ante* only authorizes him to use this discretion where the instrument is sufficient to pass an estate.

Payment
to Pro.
Treas. if no
person in
Province to
receive
money.

101. If any mortgagor becomes entitled to pay off the mortgage money, and the registered mortgagee is absent from this Province, and there is no person authorized by registered power of attorney to give a receipt to the mortgagor for the mortgage money after the date appointed for the redemption of any mortgage, it shall be lawful for the Treasurer of this Province to receive such mortgage money with all arrears of interest then due thereon, in trust for the mortgagee or other person entitled thereto, and thereupon the interest upon such mortgage shall cease to run or accrue, and the District-Registrar shall, upon presentation of the receipt of the said Treasurer, for the amount of the said mortgage money and interest, and upon proof being made to his satisfaction that such payment satisfies all moneys due and owing upon such mortgage, cause an entry to be made in the Register discharging such mortgage, stating the day and hour on which such entry is made and such entry shall be a valid discharge for such mortgage and shall have the same force and effect as is hereinbefore given to a like entry when made upon the production of a discharge of mortgage, and the District-Registrar shall endorse on the certificate of title or other instrument as aforesaid, (a) and also on the memorandum of mortgage, whenever those instruments shall be brought to him for that purpose, the several particulars hereinbefore directed to be endorsed upon each of such instruments respectively. Such moneys so paid to the Provincial Treasurer shall be paid over by him to the person or persons entitled thereto (b) on application.

Receipt.

Entry of
discharge.

(a) Sec. 109 *post*, provides for the impounding of the certificate to have it available for such endorsements.

(b) To the mortgagee or the transferee or personal representative of the mortgagee (s. 99).

102. Upon proof of the death (a) of the annuitant, (b) or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any memorandum of encumbrance, the annuity or sum of money thereby secured shall cease to be payable, and upon proof that all arrears of the said annuity and interest or money have been paid, satisfied or discharged, the District-Registrar shall make an entry in the Register, noting that such annuity or sum of money is satisfied and discharged, and shall cancel such instrument; and upon such entry being made, the land shall cease to be subject to or liable for such annuity or sum of money, and the District-Registrar shall, in any or either such case (a) as aforesaid endorse on the certificate of title, or other instrument evidencing the title of the mortgagor or encumbrancer to the land mortgaged or encumbered a memorandum of the date on which such entry as aforesaid was made by him in the Register, whenever such certificate of title, or other instrument is presented to him for that purpose.

Death of annuitant or cessation of encumbrance.
Entry in register.
D. R.'s duty in the premises.

(a) In this case the lands are released by the fact of the death of the annuitant or the occurrence of the event or circumstance, and registration is only for the purpose of clearing the Register, after the lands have ceased to be bound.

(b) Annuitant is the term used in Victoria when referring to an encumbrancee.

103. In case default be made in the payment of the principal sum, interest, annuity or rent charge, (a) or any part thereof secured by or in the observance of any covenant expressed in any mortgage or encumbrance registered under the new system, or that is herein declared to be implied in such instrument, (a) and such default be continued for the space of one calendar month, or for such longer period of time as may therein for that purpose be expressly limited, (b) the mortgagee or encumbrancee may forthwith, after giving written notice, (c) a copy of which shall be filed in the Land Titles Office, (d) to the said mortgagor or encumbrancer, his executors, administrators or assigns, and every other person appearing at the time of filing such notice in the Land Titles Office to have any estate, right or interest in or to the lands subsequent to such mortgage or encumbrance, of his intention in that behalf, without any further consent or concurrence, upon his or their part enter into possession of the lands and receive and take the rents, issues and profits thereof, and whether in or out of possession thereof to make any lease

Rights of mortgagee, etc., in case of default.

of the same or any part thereof as he may see fit, and may also in such notice require the mortgagor or encumbrancer and such other interested persons as aforesaid to pay within a time to be specified in such notice the money then due or owing on such mortgage or encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that all remedies competent will be resorted to unless such default be remedied.

Compare sec. 84 of the Victorian Act.

(a) The powers are similar in the case of a mortgage or encumbrance, but apply only to those which have been executed and registered under the new system. These powers are only exercisable on notice, given as provided by this section, and not until at least one month after service of the notice. *Vide* sec. 104 *post*.

(b) Where no time is limited by the instrument the default must have continued for at least one calendar month. An instance of such variation of time occurs in *National Bank of Australasia v. United Hand in Hand Co.*, 4 App. Cases 391, 406. As to the method of computing time see Rule 23, Sch. S, sec 26 *ante*. Notice and default cannot run concurrently.

(c) This notice may be given by the personal representative or assignee after registration as owner, (secs. 114, 115 *post*), or registered transferee of the mortgagee (sec. 99 *ante*), and may also contain a notice of intention to apply for a foreclosure order (see sec. 106 *post*), and may be in the form following the notes to this section. If the mortgage makes it optional with the mortgagee to require payment of principal on default made in the payment of interest, the exercise of the option should distinctly appear by the notice. The notice may be given by an agent, and it would be sufficient if it were shewn that notice in fact reached the mortgagor: *McDonald v. Rowe*, 3 A. J. R. 90. Upon a notice to pay interest only the mortgagee may proceed to sell for both principal and interest, although the

may also in such
other interested
ed in such notice
cumbrance, or to
the case may be,
less such default

a mortgage or
h have been
tem. These
s provided by
after service

trument the
one calendar
ne occurs in
in Hand Co.,
f computing
and default

representa-
(secs. 114,
gee (sec. 99
ion to apply
ay be in the
e mortgage
re payment
of interest,
ear by the
ent, and it
ice in fact
A. J. R. 90.
e may pro-
though the

NOTICE TO MORTGAGOR, ETC.

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time for payment of principal has not arrived, provided default has been made in the payment of the interest: *Harvey v. Inglis*, 5 W. W., and A'B. (E) 125. Notice may be served substitutionally as provided in the instrument or as the Registrar may direct under the proviso to sec. 106 *post*. The omission to give such notices, or the non-receipt thereof, would have no effect as against a purchaser or *bona fide* encumbrancer (see sec. 143 *post*); but notice ought to be given to all persons appearing by the Register or Caveat Book to be interested. According to Sedgefield's *Practice of the Office of Titles of Victoria*, service on the executor or administrator of the mortgagor, or on the assignee of his insolvent estate, is not sufficient unless he has been registered as owner. Compare secs. 114 and 115 *post*. A transferee must register before he is entitled to notice, *vide* secs. 80 and 99 *ante*.

As to service of notices see secs. 54 and 55 *ante*. The District Registrar cannot authorize substitutional service of such notices. Compare sec. 79 of the Act of 1885.

(d) See sec. 108 *post*.

NOTICE BY MORTGAGEE.

THE REAL PROPERTY ACT OF 1889.

MANITOBA

TO WIT.

In the matter of

(here describe the lands)

I,

(The names and additions of the mortgagee, encumbrancee or person for the time being registered owner of the mortgage or rent charge.)

hereby give you notice that demand payment of the sum of
and interest thereon at the rate of per centum per annum,
from the day of one thousand eight hundred
and due to the said
upon a certain indenture of mortgage executed by
to
and dated the day of one thousand eight

hundred and for securing the repayment of
and interest thereon, as therein mentioned, on the lands above described
default having been made in payment of the secured by
said mortgage (or in the observance of the covenants therein as the case may
be) for the space of over one calendar month.

And take notice, that unless payment of the said mortgage money and
interest be made (or such default be remedied) within calendar
month from the time of your being served herewith, the said
(mortgagee, encumbrancee, or, as the case may be) will proceed
with or without any consent or concurrence on your part, or of any
person claiming through or under you subsequently to such mortgage,
and without any further notice to you to enter into possession of the said
mortgaged lands and premises, and to receive and take the rents, issues
and profits thereof; and whether in or out of possession of the same, to
make any lease or leases of the same, as the said
 shall see fit, and that all remedies competent
will be resorted to unless such default be remedied.

And after such default in payment continuing for the further space of
one month as aforesaid the said (mortgagee, encumbrancee, or
as the case may be) will proceed to sell the land so mortgaged or encum-
bered or any part thereof and all the estate or interest therein of the
mortgagor in such manner and upon such terms as may think
fit and pursuant to the provisions of the Real Property Act of 1889.

And take notice, that in the event of a sale not realizing sufficient to
satisfy the moneys secured by said mortgage together with the expenses
occasioned by such sale, then the said (mortgagee, encumbrancee, or as the
case may be) will after such default shall have continued for six months
after the time mentioned in said mortgage for payment, make an appli-
cation in writing to the District-Registrar for an order for foreclosure.

Dated at this day of A.D. 18

Mortgagee
(or as the case may be).

Power to
sell.

101. After such default in payment or in the observance of covenants
continuing for the further space of one calendar month from the date of
service of such notice, such mortgagee or encumbrancee (a) is hereby
authorized and empowered to sell the land so mortgaged or encumbered,
or any part thereof, and all the estate or interest therein of the
mortgagor or encumbrancee and of the other interested persons referred
to in the last preceding section, and either altogether, or in lots, by
public auction or by private contract or both such modes of sale (b)
and subject to such conditions as he may think fit, (c) without being liable
for any losses occasioned thereby; (d) and to make and execute all such

instruments as shall be necessary for the sale or enjoyment thereof, and all of which sales, contracts, matters and things hereby authorized shall be as valid and effectual as if the mortgagor or encumbrancer and other persons as aforesaid had made, done or executed the same: (e) and the receipt in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of such land, estate or interest, or of any portion thereof, for so much of his purchase money as may be thereby expressed to be received; and no such purchaser shall be answerable for the loss, misapplication or non-application, or be obliged to see to the application of the purchase money by him paid, nor shall he be obliged to inquire as to the fact of any default or notice having been made or given as aforesaid, or how the purchase money to arise from the sale of any such land, estate or interest shall be applied; (f) but such purchase money shall be applied: firstly, in payment of the expenses occasioned by such sale; secondly, in payment of the moneys which may then be due or owing to the mortgagee or encumbrancee; thirdly, in payment of subsequent mortgages or encumbrances, if any, in the order of their priority; and the surplus, if any, shall be paid to the mortgagor or encumbrancer, as the case may be. (g)

Receipt for
purchase
money.

Purchaser
not bound
to see to
application
of purchase
money, etc.
Application
thereof.

(a) The notice served as required by the preceding section may also be given by the registered personal representative, assignee or transferee; see notes to sec. 103 *ante*.

(b) A sale under this power is bad if the land be sold together with other lands in mortgage from the same mortgagor under the old system by one contract and at one price. *Ross v. The Victorian Permanent Building Society*, 8 V. L. R. (E.) 254; and *semble* on a sale by one mortgagee of several mortgages from one mortgagor, all under the Act separate and distinct sales would also be necessary.

See sec. 77 *ante* as to proceedings on informal instruments.

It seems necessary in most cases to sell by public auction in order to have the market value established by a sale or failure to sell for an upset price after sufficient notice and publication. It must also be borne in mind that it is a condition precedent to foreclosure in sec. 106 *post*, that the land be put up for sale by a licensed auctioneer at public auction.

(c) Unusual or harsh conditions should not be required.

(d) The mortgagee or encumbrancee selling under power of sale is liable to all the obligations as to prudent administration imposed on executors and trustees. *Latch v. Furlong*, 12 Gr. 303.

(e) The form of transfer "Schedule B" (sec. 72) may be varied to suit the circumstances. It should recite that the sale is made by the mortgagee under power of sale and omit the words "registered owner."

In Victoria the Office of Titles before registering a transfer under power of sale requires proof of demand, where the money is payable on demand, of default having happened and continued as recommended in *Ex parte Hassall*, c. 10, S. C. R. (L) 292, 299, by the Supreme Court of New South Wales; of service of notice, as approved by the Judicial Committee of the Privy Council, in *Re National Bank of Australasia v. Hand in Hand Co.*, App. Cases 391.

The happening and continuance of default should be proved by the affidavit or statutory declaration of the mortgagee or of some person having knowledge of the facts, stating his means of knowledge.

Where notice has been given by letter, the post office registration receipt ought to be produced.

All these proofs could be dispensed with on production of a written waiver of notice or consent from the mortgagor or owner of the land to the transfer. Such waiver or consent may be given by the official assignee or personal representative of the mortgagor or owner for the time being when registered as proprietor.

(f) See secs. 64 and 85 *ante*, and secs. 133 and 143 *post*.

(g) Compare secs. 85 and 86 Victorian Land Transfer Statute, and sec. 57, Queensland Act.

A purchaser at a mortgage sale under powers should ascertain the interest of any tenant in possession of the

land, for the mortgagor might, after mortgaging, have created a tenancy in the land not binding on the mortgagee, (see sec. 87 *ante*) but diminishing its annual value; and the effect of the new certificate may be to legalize the tenancy as against the purchaser. In such a case the mortgagee should be required to obtain the actual occupation, or to compel the tenant to accept a holding beneficial to the purchaser. Compare *Colonial Bank v. Roach*, 1 V. R. (L) 165; 1 A. J. R. 136.

105. Upon the registration of any memorandum or instrument of transfer executed by a mortgagee or encumbrancee, for the purpose of such sale, as aforesaid, the estate or interest of the mortgagor or encumbrancer and all subsequent encumbrances therein described as to be conveyed, shall pass to and vest in the purchaser, freed and discharged from all liability on account of such mortgage or encumbrance, or of any mortgage or encumbrance registered subsequent thereto, and the purchaser shall be entitled to receive a certificate for the same.

As to Form see note (e), sec. 104 *ante*.

No interest passes to the purchaser until registration. See secs. 74 and 77 and notes *ante*; sec. 144 *post*.

Compare secs. 42, 53, 58, 87 and 106, Victorian Land Transfer Statute. See also *National Bank of Australasia v. Hand in Hand*, etc., 4 App. Cases 391, 407; *London Chartered Bank of Australasia v. Hayes*, 2 V. R. (E) 104; 2 A. J. R. 60; *Kickham v. The Queen*, 8 V. L. R. (E) 1,250.

106. Whenever default has been made in payment of the principal or interest moneys secured by a mortgage registered under the new system, and such default shall be continued for six months after the time for payment mentioned in the mortgage, the mortgagee or his transferee may make application in writing to the District-Registrar for an order for foreclosure and such application shall state that such default has been made and has continued for the period aforesaid, and that the land mortgaged has been offered for sale by public auction by a licensed auctioneer after a notice of sale served as hereinbefore provided, and that the amount of the highest bid at such sale was not sufficient to satisfy the moneys secured by such mortgage together with the expenses occasioned by such sale, and that such notice or a subsequent notice served upon the same

persons declared the intention of the mortgagee or his transferee to make an application for foreclosure in case such sale proved abortive, and such application shall be accompanied by a statutory declaration or affidavit of the auctioneer by whom such land was put up for sale and such other proof of the matters stated by the applicant as the District-Registrar may require.

Proviso for
service of
notice.

Provided that unless the District-Registrar shall see fit to otherwise order, such notice shall be served personally on such mortgagor or encumbrancer and other persons interested as aforesaid, but in case he or they cannot, after due diligence, be found, the District-Registrar may direct service of such notice by being left on the mortgaged lands, or by the same being sent through the post office by a registered letter directed to him or them at his or their last known address or in such other manner as the District-Registrar may direct.

See notes and form of notice, secs. 103, 104 *ante*. This procedure is permitted only in the case of mortgages and does not apply to encumbrances, but see next section.

The application in writing necessary under this section may be in the following form :

FORM OF APPLICATION FOR FORECLOSURE ORDER.

THE REAL PROPERTY ACT OF 1889.

MANITOBA,	}	<i>In re</i> APPLICATION No.	
LAND TITLES DISTRICT OF		and MORTGAGE No.	affecting
To Wit:			

(*Here describe lands.*)

TO THE DISTRICT REGISTRAR,—

The *Mortgagee* hereby applies for an order of foreclosure under the above Act against (*describe mortgagor*) of all his estate, right, title, interest and equity of redemption in said lands and declares :

1. That default has been made in the payment of the moneys secured by the said mortgage and that such default has continued for more than six months after the time of payment mentioned therein.

2. That after notices duly given as provided by said Act the said mortgaged lands were on the day of A.D. 18 offered for sale at public auction by a licensed auctioneer at the time and place mentioned in such notices and the highest bid made at such sale was not sufficient to satisfy the moneys secured by such mortgage together with the expenses occasioned by such sale.

3. That notice of the mortgagee's intention to apply for foreclosure in case the sale proved abortive, has been served on the mortgagor and all other persons appearing to have any estate, right or interest, in the said lands subsequent to said mortgage.

Dated at this day of A.D. 18

Signature of mortgagee

by

His Solicitor.

(Here follow affidavits as to fitness of auctioneer, fairness of sale and truth of facts alleged with schedules, etc., annexed).

The auctioneer is required to make declaration as to the sale.

107. Upon such application the District-Registrar may, if he considers it proper, cause notice to be published once in each of three successive weeks in such newspaper or newspapers as the District-Registrar may direct offering such land for private sale, and shall appoint a time not less than one month from the date of the first of such advertisements, or in case there is no advertisement not less than one month from the date of such application (a) upon or after which the District-Registrar may issue to such applicant an order for foreclosure (b) unless in the interval a sufficient amount has been obtained by the sale of such lands or paid by or on behalf of such mortgagor or encumbrancer or other person as aforesaid, to satisfy the principal and interest moneys secured, and all expenses occasioned by such sale and proceedings; and every such order for foreclosure under the hand of the District-Registrar when entered (c) in the Register Book shall have the effect of vesting in the mortgagee or his transferee the land mentioned in such order, free from all right and equity of redemption on the part of the mortgagor or encumbrancer or of any person claiming through or under him subsequently to the mortgage or encumbrance, and such mortgagee, encumbrancee or transferee shall upon such entry being made (c) be deemed a transferee of the land, and become the proprietor thereof, and be entitled to receive a certificate of title to the same. (d)

D. R. may cause notice of application to be published.

Order of foreclosure.

(a) The application in writing required by the foregoing section should be filed as early as may be, in order to allow the necessary time to elapse before the foreclosure order can be made.

(b) The order may be as follows :

FORM OF FORECLOSURE ORDER.

(Formal part same as in application for foreclosure).

Upon the application of A. B., the mortgagee, (or as the case may be) of said lands under the said mortgage by C. D. the mortgagor therein, to the

MAN.L.A.A.

11

said mortgagee (or as the case may be) and upon reading the affidavits and papers filed ; and whereas it appears to me that the proceedings required by the said Act have been regularly and properly taken, and that default has been made in payment of the moneys secured by the said mortgage and that such default has continued for a period of more than six months after the time for payment mentioned in the mortgage and still continues, and that the moneys secured by said mortgage and the expenses occasioned by such default are all still due, owing and unpaid.

IT IS HEREBY ORDERED under the provisions of said Act that the said C. D. do stand absolutely debarred and foreclosed from all estate, right, title and equity of redemption in and to the said above described lands and premises.

Issued under my hand and seal of office at the Land Titles Office at
this day of A.D. 18 .

District-Registrar.

[SEAL.]

(c) The foreclosure order, like any other instrument of transfer, has its operative effect suspended until the entry of the foreclosure and the registration of the mortgage, etc., as owner.

(d) See Rule 17, Sch. S, sec. 26 *ante*. The certificate of title if mortgaged since 5th of March, 1889, would be impounded in the proper Land Titles Office under sec. 109 *post*; if not it must either be produced or its production dispensed with by the District-Registrar, as provided by sec. 68 (6) *ante*.

No procedure is provided in this Act by which an encumbrancee can obtain such an order of foreclosure. See note to sec. 106 *ante*.

In Queensland the Amending Act of 1877, (sec. 19) provided that in the case of the purchase of lands charged by a mortgage lien or encumbrance by the person entitled to such charge, he should be entitled to a certificate of title discharged therefrom. Under this Act the charge would *ipso facto* be merged and extinguished, unless an intention to prevent a merger has been expressed in the instrument

of transfer or may be implied from the circumstances of the case.

108. For the purpose of this Act the District-Registrar, Examiner of *Lis Pendens* Titles, or other officers of the Land Titles Office, shall not have notice of, or be bound by, any proceedings taken by any mortgagee or encumbrancee ^{to be filed by mortgagee.} under his mortgage security or encumbrance for the purpose of foreclosing, selling or otherwise realizing upon his said security or encumbrance unless such mortgagee or encumbrancee shall have filed a *Lis Pendens* or in case of proceedings under Power of Sale a notice of such proceedings in the Land Titles Office for the District in which the land is situated.

See secs. 103 *ante* and 131 *post*.

109. In every case where a mortgage or other encumbrance (except a Mortgaged lease), under the hand of the holder of the certificate of title, is presented to the District-Registrar for registration, the certificate of title shall be deposited with the District-Registrar, who shall retain the same on behalf of all the persons interested in the lands mentioned in such certificate. The District-Registrar shall, if desired, (a) furnish to the owner of such land a certified copy of the certificate of title and to the encumbrancee or his assignee a certificate of charge and before any subsequent dealings with said land by the owner or before discharges of all existing encumbrances are registered, said certified copy shall be delivered up to the District-Registrar to be cancelled and before any dealing with or discharge of said encumbrance is registered, except in the case provided by section one hundred and one, (b) said certificate of charge shall be delivered up to the District-Registrar to be cancelled. Provided, however, that the District-Registrar may dispense with such production upon satisfactory evidence being produced of the loss or destruction of any such certificate or certified copy. (c)

(a) A præcipe must be filed for every such copy or certificate of charge.

(b) Where payment is made to the Provincial Treasurer.

(c) As provided by sec 68 (6) *ante*.

FORM OF CERTIFICATE OF CHARGES.

LAND TITLES OFFICE, DISTRICT OF

Certificate of Charges.

Mortgage No.

Application No.

Assignment No.

Cert. of Title No.

This is to certify that a mortgage (or encumbrance, or as the case may be), made by (describe mortgagor, encumbrancer, or as the case may

be), to (describe mortgagee, etc., and recite assignments, etc., if any), for the sum of _____ Dollars affecting (describe lands), was duly registered in the Land Titles Office at _____, on the _____ day of _____ A.D. 18 _____, at _____ o'clock in the noon, and that no registered mortgages or encumbrances affecting the said lands are entitled to priority over the said mortgage (or as the case may be), except the following, that is to say: (here set forth prior charges).

Dated at the Land Titles Office at Winnipeg, this _____ day of _____ A.D. 18 _____.

[Seal.]

District Registrar.

POWERS OF ATTORNEY.

Attorney
may be ap-
pointed.

Form of in-
strument.

Registra-
tion.

110. The registered proprietor of any land, estate or interest under the new system may authorize and appoint any person to act for him or on his behalf in respect of the transfer or other dealing with such land, estate or interest in accordance with the provisions of this Act, by executing a power of attorney in any form heretofore in use for the like purpose, or in the form contained in Schedule K to this Act or as near thereto as circumstances will permit, and a duplicate or attested copy thereof shall be deposited with the District-Registrar, who shall enter the same in a register kept for that purpose, and if the land therein referred to is specifically and properly described he shall also enter in the Register a memorandum of the particulars therein contained and the date and hour and minute it is deposited with him.

See sec. 41 *ante* as to applications by an attorney.

SCHEDULE K.

FORM OF POWER OF ATTORNEY.

I, A. B., being registered as owner of an estate (here state nature of the estate or interest) subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (or endorsed hereon) in (here refer to schedule for description and contents of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or lease of such parcel) do hereby appoint C. D. attorney on my behalf to (here state the nature and extent of the powers intended to be conferred, as whether to sell, lease, mortgage, etc.) the lands in the said schedule described, and to execute all such instruments, and do all such acts, matters and things as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants or conditions binding upon any lessee or occupier of the lands, or upon any

other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass.

In witness whereof, I have hereunto subscribed my name this
day of

Signed by the above named

A. B., this

day of

in the presence of X. Y.

(As to seal see note to sec. 144.)

111. A power of attorney given by a person before as well as after becoming an owner of any land or of any lease, mortgage or charge, or given before, as well as after, such land shall be under the new system, shall be deemed to be within the meaning of said section one hundred and ten, and every power of attorney heretofore given or which shall hereafter be given, or a copy thereof attested or certified in the same manner as instruments may be attested or certified under the Lands Registration Act of Manitoba and amendments thereto, when deposited with the District-Registrar shall, while continuing in force, be valid and available within the scope and to the extent of the powers and authorities given or to be given by such power concerning the lands, tenements and chattels real generally of the principal for similar or corresponding dealings with any land under the operation of the new system, or with any lease, mortgage, or charge thereon; and all powers of attorney deposited with the District-Registrar under this section shall be duly executed, attested and verified by an affidavit of the subscribing witness, and may be in any form heretofore in use or in the form in schedule L to this Act.

What powers of attorney valid.
Affidavit of execution.

Compare notes referring to *chattels real*, sec. 27 *ante*.

See Form of Attestation sec. 74 *ante*.

SCHEDULE L.

FORM OF GENERAL POWER OF ATTORNEY.

I, A. B., (*insert addition*) do hereby appoint C. D. (*insert addition*) my attorney to sell to any person all or any lands, leases, mortgages or charges, whether now belonging to me, or which shall hereafter belong to me under or by virtue of the "Real Property Act of 1889," or of which I am now or shall hereafter be the owner under the said Act. Also to mortgage all or any such lands or leases for any sum at any rate of interest. Also to charge the same with any annuity of any amount. Also to lease all or any such lands at any rent. Also to surrender or obtain or accept the surrender of any lease in which I am or may be interested. Also to

SCHEDULE M.

FORM OF REVOCATION OF POWER.

I, A. B., of _____ hereby revoke the power of attorney
given by me to _____ dated the _____ day of _____

In witness whereof I have hereunto subscribed my name this
_____ day of _____

Signed by the aforesaid A. B.)
on the _____ day of _____)
in the presence of _____)

[A. B.]

In all cases it may be noted that a seal would probably be necessary in order to give the attorney authority to enter into covenants and specialty contracts. See note to sec. 96 *ante*, and sec. 144 *post*.

The following clause in Powers of Attorney is recommended by the Officer of Titles in Victoria, to facilitate the passing of instruments signed by attorney:—

"And also for me and in my name, and on my behalf, to deal with any land, lease, mortgage, or charge of which I now am or shall or may at any time or times hereafter be the registered proprietor, either solely or jointly with any other person or persons as effectually as I could do in all respects, and to sign any instruments necessary to give effect to any such dealings."

TRANSMISSIONS.

113. Whenever the owner of any lands subject to the new system dies, the executor or administrator (*a*) shall, before dealing with the lands, (*b*) make application in writing (*c*) to the District-Registrar to be registered as owner, and shall produce to the District-Registrar the probate of the will of the deceased owner, or letters of administration or the order of the court authorizing him to administer the estate of the deceased owner, or an office copy of the said probate letters of administration or order, as the case may be, (*d*) and such further evidence as the District-Registrar may require; (*e*) and thereupon the District-Registrar shall enter in the Register a memorial of the date of the will and of the probate, or of the letters of administration or order of the court as aforesaid, the date, hour and minute of the production of the same to him, the date of the death of such owner when the same can be ascertained, with such other particulars as he may deem necessary, and upon such entry being made the executor or administrator, as the case may be, shall be deemed to be the owner of such lands (*f*) and the District-Registrar.

Personal
representatives of
deceased
owner to
make application.

Proof required.

Particulars
to be entered.

Title to relate back to death.

Registrar shall note the fact of such registration by memorandum under his hand on the probate of the will, letters of administration, order or other instrument as aforesaid; (g) Provided always, that the title of the executor or administrator to such land shall relate back and take effect as from the date of the death of the deceased owner; (h) Provided that the duplicate certificate of title granted to the deceased owner shall be delivered up to be cancelled, (i) and the District-Registrar shall issue to the executor or administrator a fresh certificate of title stating therein the fact that the new registered owner is the executor or administrator. (j)

(a) See sec. 3 (1) and (17) *ante*, as to what is included in the word "lands" and as to the expression "transmission" which would be included in the term "transfer," sec. 3 (3) *ante*, where the context permitted.

This section only applies to lands after an application has been filed (sec. 42 *ante*), but applies to such lands even where deceased held them in a fiduciary capacity, see sec. 117 *post*.

The death of the owner does not stay proceedings in the Land Titles Office, (secs. 49, 50, 51 and 81, *ante*), but on dealings, the sanction of the Court would be required in case of joint proprietors, where under secs. 82 and 83 *ante*, the entry "no survivorship" has been made.

As to the descent of lands, see secs. 27 and 29 and notes *ante*. See also the Wills Act of Manitoba, 45 Vic. cap. 2, and Surrogate Acts cited at note (d) *infra*.

(b) An executor must prove the will before he can apply for registration of the testator's land; (*re Bannerman*, 2 Man. L. R. 377); see also Rule 7, Sch. S, sec. 26 *ante*; and of necessity probate must be made and letters of administration must be granted before the intestate's lands vest in the personal representatives. Compare remarks of Taylor, C.J., *Re Lewis*, 5 Man. L. R. 48, and see note (f), *infra*.

(c) The application should be by petition to the Registrar, setting out the circumstances of the transmission.

(d) See Acts affecting the Surrogate Court, 44 Vic. cap. 28, amended by 46 & 47 Vic. cap. 1, secs. 96-102; and 49 Vic. cap. 5; also 48 Vic. cap. 21; 49 Vic. cap. 13; 51 Vic. cap. 29, sec. 32; and 52 Vic. cap. 22.

(e) The production of Probate or Letters of Administration can not be received as sufficient evidence of death or intestacy, *Re Lewis*, 5 Man. L. R. 44. These facts must be proved in the usual manner, and the production of a tax certificate is required by Rule 19, Sch. S, s. 26 *ante*. A fee is exigible on the entry of transmission (see tariff sec. 21 *ante*) and commission is payable as required by sec. 140 *post*, which may render a valuation of the lands necessary, (see sec. 71 *ante*).

(f) The lands do not pass until the registration has been made (secs. 74 and 77 *ante*), and before the entry of transmission can be made in the Register all proceedings must be completed if any were pending at the time of the owner's decease. See secs. 49, 50, 51 and 81 *ante*.

(g) See secs. 74 and 76, and Rules 7, and 14-19, Sch. S, sec. 26 *ante*.

(h) The title of the personal representative would be subject to all encumbrances, liens and charges registered in the meantime, (see notes to sec. 29 *ante*, also secs. 63, 64 and 65 *ante*), and *semble*, that he should take possession in fact of all lands which have passed to him, for during the time between the death of the deceased owner and the transmission there was nothing to prevent another entering and holding possession of any vacant or unoccupied lands.

(i) See sec. 73 and Rules 17 and 22, Sch. S, sec. 26 *ante*. The District Registrar may dispense with the production of the certificate of title in a proper case, as provided by sec. 68 (6) *ante*, but a provisional certificate [sec. 68 (7) *ante*] could not be issued in the place of one lost or



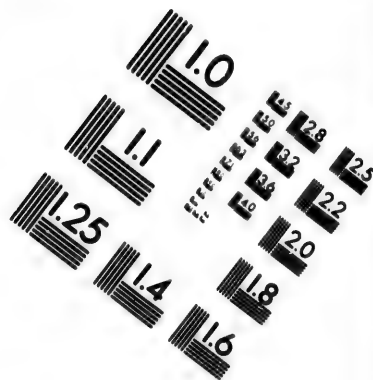
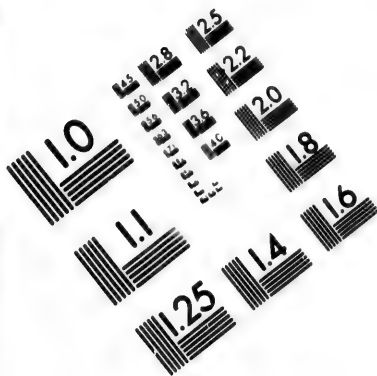
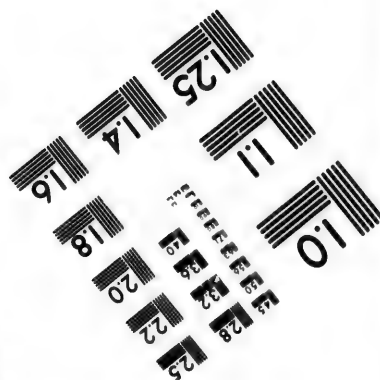
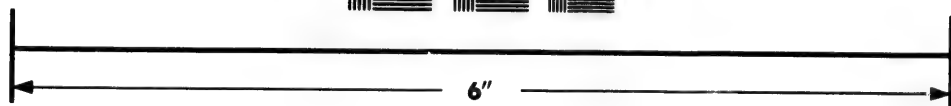
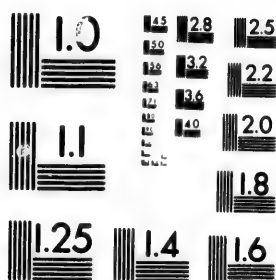


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destroyed, as there is as yet no 'owner' to whom it can be issued.

(j) The new registered owner takes subject to all trusts and equities upon which the deceased held the estate as well as those to which he may be bound in his fiduciary capacity. See secs. 29, 68 (5), 80, 86 and 117.

Transmis-
sion of
mortgage,
encum-
brance or
lease.

Particulars
to be en-
tered.

Executor
or admin-
istrator
deemed to
be owner.

114. Whenever any mortgage, encumbrance or lease affecting land registered under the new system is transmitted in consequence of the will or intestacy of the owner thereof, probate or an office copy of the will of the deceased owner, or letters of administration, or the order of the court authorizing a person as aforesaid to administer the estate of the deceased owner, accompanied by an application in writing from the executor or administrator, claiming to be registered as owner in respect of such estate or interest, and such further evidence as the District-Registrar may require, shall be produced to the District-Registrar, who shall thereupon enter in the Register and on the instrument evidencing title to the mortgage, encumbrance or lease transmitted, the date of the will and of the probate, or of the letters of administration or order of the court as aforesaid, the date and hour of the production of the same to him, the date of the death of such owner, when the same can be ascertained, with such other particulars as he may deem necessary, and upon such entry being made the executor or administrator, as the case may be, shall be deemed to be the owner of such mortgage, encumbrance or lease, and the District-Registrar shall note the fact of such registration by memorandum under his hand on the letters of administration, probate, or other instrument as aforesaid.

See 45 Vic. cap. 2, sec. 30.

See notes to sec. 113 *ante*.

See also secs. 80, 98-106 *ante*, and notes.

Assign-
ment of
owner for
benefit of
creditors.

115. Upon any assignment being made by the registered owner of any land, mortgage or encumbrance for the benefit of his creditors, the assignee or trustee of such person shall be entitled to be registered as owner in respect of the same, and the District-Registrar, upon registration of the instrument transferring such land, mortgage or encumbrance to such assignee or trustee, shall enter in the Register a memorandum notifying the appointment of such assignee or trustee, and upon such entry being made such assignee or trustee shall be deemed and taken to be the owner of such land and a certificate of title shall issue in his favor.

Compare with sections 113 and 114 and notes; see sec. 117 *post*.

As to commission, see sec. 140 *post*, and sec. 71 *ante* as to valuation.

116. Under the preceding provisions as to a bankrupt lessee, no entry of the assignee's or trustee's refusal to accept shall operate to prejudice any action or cause of action which shall have previously been commenced or hereafter accrued in respect of any breach or non-observance of any covenants in such lease. Actions on covenants saved on assignment by lessee.

See secs. 93 and 94 *ante*. Compare note (g) to sec. 104 *ante*.

117. Any person registered in place of a deceased person or bankrupt proprietor, shall hold the land in respect of which he is registered upon the trusts and for the purposes to which the same is applicable by this Act or by law, and subject to any trusts and equities upon which the deceased or bankrupt proprietor held the same, but, for the purpose of any registered dealings with such land, he shall be deemed to be the absolute proprietor thereof. Personal representative and assignee of bankrupt to hold upon trust. (a) Provided always that the person or persons beneficially interested in any such lands or any estate or interest therein, may apply to a court or judge having jurisdiction to have the same taken out of the hands of the assignee or trustee having charge by law of such bankrupt (*sic*) property, and transferred to some other person or persons, and the court or judge, upon reasonable cause being shown, shall name some suitable person or persons as proprietor of the lands, or the estate or interest in question, as the case may be, and upon the person or persons so named accepting the proprietorship and giving the necessary security for the due fulfillment of the trusts, the court or judge shall make an order directing the District-Registrar to cancel the certificate to the assignee or trustee, and to make a new certificate to the person or persons so named; (b) and the District-Registrar, upon the production of such order, shall cancel the certificate to the assignee or trustee, and shall enter in the Register a memorandum of the appointment by order of the court of such other proprietor or proprietors in trust, (c) and a certificate of title shall be issued to him or them. Proviso for removal of trustee or assignee.

The "property" referred to in the eleventh line consists of the lands, estate or interest of a deceased person or bankrupt proprietor, and evidently the word "bankrupt" is a typographical error.

Compare cap. 13 of 49 Vic., "*An Act respecting Trustees and Executors, and the Administration of Estates.*"

(a) The beneficiaries may protect themselves by filing caveats, or if proceedings in Court are taken by filing *lis pendens* (secs. 130 and 131 *post*).

The District Registrar may prevent fraud or improper dealings by filing a caution [sec. 68 (5) *ante*].

In Victoria the practice of the Title's Office is to distinguish by the letters S. O., denoting "Special Ownership," the title of every registered proprietor, whether of land, lease or mortgage known to hold in a financial capacity. Mr. A'Becket comments on this practice, (*Transfer of Land Statute*, p. 183 *et seq.*), under section 129 of the Victorian Act. But section 38 of the Victorian Statute has a clause giving the Commissioner of Titles discretionary power for the protection of the interests of beneficiaries which has been omitted in section 86 of this Act. See notes to sec. 86 *ante*, and compare sec. 68 (5) of this statute with the third paragraph of sec. 129 Victorian Act.

(b) See sec. 123 *post*. *Quære* as to certificate with Judge's order required by the proviso.

The District Registrar can enforce the production of the certificate of title, sec. 68 (1) *ante*, and secs. 121 and 124 *post*, or its production may in a proper case be dispensed with, sec. 68 (6).

(c) This direction of the Court would not authorize mention of the trust in the Register, which should show merely a memorial that another person has been appointed by the Court to be the registered owner of the estate. See sec. 86 *ante*, and note citing report of the Queensland Royal Commission. (See sec. 33, Act of 1890, in Appendix.)

SHERIFF'S SALES.

The clauses of the Real Property Act of 1885, 102-106, as amended by 50 Vic. cap. 11, secs. 32-35 and 51 Vic. cap. 32, secs. 19 and 20, have not been consolidated in this Act, and

they have been affected by the repealing clauses section 2 *ante* and section 152 *post*. See also notes to section 16 *ante*, and compare 52 Vic. cap. 36, secs. 13, 14 and 15. See note to section 77 *ante* as the Registration of Sheriffs' Deeds.

JURISDICTION OF THE COURT.

118. If any person is dissatisfied with any act, omission, refusal, Appeal decision, direction or order of the District-Registrar, such person may require the District-Registrar to set forth in writing under his hand the grounds of such act, omission, refusal, direction, decision or order, and such person may then apply to a judge of the Court of Queen's Bench in Chambers by petition, setting forth the particulars and the grounds of his dissatisfaction, and thereupon the District-Registrar and Attorney-General shall be served with such petition, which said petition shall state the time and place for the hearing thereof, and the court or judge shall have the jurisdiction to hear the said petition, and shall make such order in the premises as the circumstances of the case may require, and as the court or judge may direct, and make such order as to the costs of the parties appearing upon such petition as it or he may see fit.

See proviso of sec. 123 *post* as to certificates of title ordered to be issued by the Court.

All such orders may be appealed from, see sec. 126 *post*; see sec. 135 Victorian *Transfer of Land Statute*.

This section corresponds with sec. 109 of the Act of 1885, on which Mr. Jones (*Torrens System*) has noted some interesting cases in New South Wales under a statute containing similar provisions.

Where a certificate issued with an endorsement purporting to reserve "*any lawful rights incident to the alignment of streets or roads abutting on the land,*" the Court directed the Registrar-General to cancel such certificate, and to issue a new one without such endorsement. *Ex parte Smart*, 6 S. C. R. 188.

Where an application was rejected on the grounds substantially that various encumbrances affecting the lands had not been noticed in the application, and that the parties interested in the encumbrances were not parties to

the application, and it appeared to the Court that the legal estate was vested in Trustees who had made the application, and that they had power to sell and convey a title in fee simple to purchasers, the Registrar-General was ordered to cause the investigation of the title to be proceeded with. *Ex parte Penington et al.*, 13 S. C. R. 305.

Where an attorney, under a power of attorney, consented to a conveyance from trustees, under a settlement, and the objection was taken "that the consent to the sale involved discretion and judgment, and could not be delegated by power of attorney," the Court ratified the refusal on the allegation stated, although the power had special reference to the consent required. A'Becket, *Land Transfer Statute*, 191.

The trustees of a settlement having power to exchange the settled lands for other land "yielding a rental equal in amount to the lands exchanged for the same," did exchange the settled property for other property of greater value, but not actually yielding any rent at the time, and executed the necessary conveyances under the general law. The Court held the power badly exercised, and refused to make an order for the registration of the vendees of the settled lands, under the statute. *Ex parte Daugherty*, 4 A. J. R. 71.

These applications have been treated as in the nature of applications for *mandamus* to the Registrar to perform a supposed duty, but the Court declined to interfere unless the applicant's title appeared distinctly to be a good one. *Fitzgerald v. Archer*, 1 W. W. & A'B. (L.) 40. In *Ex parte Patterson*, 4 A. J. R. 26, the Court spoke of this procedure as rendering a *mandamus* unnecessary. Mr. Justice Stephen said, in *Ex parte Folk*, 6 V. L. R. (L.) 405, 409, "I think that in such an application as the present, the Court is not called upon to give an absolute and final decision upon the

point submitted, as it might do if the persons adversely interested were litigating it; we would be slow in such a case to overrule the Registrar when by so doing we might throw a burden upon the insurance fund." Even where the Registrar was blameable for refusing to take such steps as might have been taken in the investigation of a title pending the decision of an appeal on some of the points involved, the Court refused to deprive him of his costs, in view of his position as guardian of the assurance fund. *Ex parte Bowman*, 7 V. L. R. (L.) 314.

In Victoria the proceeding is by summons to the Registrar to appear before the Supreme Court to substantiate and uphold the grounds of his refusal, etc., and these summonses are heard in term before the full Court. Counsel for the Registrar opens the case at length and replies. (A'Becket, *Land Transfer Statute*, 192.) The Registrar should make known his reasons in point of law, or in point of fact. *Ex parte Bond*, 6 V. L. R. (L.) 458, 463.

119. Whenever upon the examination of the title to any land, either before or after it is brought under the new system, the District-Registrar, after hearing all the evidence procurable, entertains a doubt as to any matter of law or fact arising upon such title, he may state a case for the opinion of the court or a judge; the District-Registrar may also name the parties to such case, and the manner in which the proceedings in relation thereto are to be brought before the court or judge, to which such case is referred. D. R. may state a case for opinion of court or judge.

Compare sec. 48 of the Territorial Act, *post*, and from S. there given for cases stated.

See note to next following section.

120. Whenever any question arises with regard to the performance of any duties, or the exercise of any of the functions by this Act conferred or imposed upon the District-Registrar, or whenever in the exercise of any of the duties of the District-Registrar, any question arises as to the true construction or legal validity or effect of any instrument, or as to the persons entitled, or to the extent or nature of the estate, right or interest, power or authority, of any person or class of persons, or the Uncertain or difficult matter may be referred to judge in Chambers.

Power of
judge.

mode in which any entry ought to be made on the Register or certificate of title, or as to any doubtful or uncertain right or interest stated, or dealt with by the District-Registrar, it shall be competent for him to refer the same with a short statement of facts and the reasons for his referring the matter and the names of the parties interested so far as he knows or has been informed, to a judge of the Court of Queen's Bench in Chambers, who shall allow any of the parties interested, and the Attorney-General for the Province, to appear before him, and may summon any other persons to appear and show cause in relation thereto; and if upon such reference the said judge, having regard to the parties appearing before him, thinks proper to decide the question, he shall have power to do so or to direct any proceedings to be instituted for that purpose, or, at the discretion of the said judge, and without deciding such question, to direct such particular form of entry to be made on the Register or certificate of title as under the circumstances appears to be just.

Where the Commissioner of Titles, instead of asking the opinion of the Court under section 128 of the Victorian *Transfer of Land Statute*, decided that the words "any writ" in the section (106) of that statute, referring to sales under *fi. fa.*, decree or order of the Supreme Court, meant an original, and not an *alias* or *pluries* writ, and in consequence of that decision registration was refused, the Court being of a different opinion, ordered the registration to be made and allowed each party to bear his own costs. *Ex parte Paterson*, 3 V. R. (L.) 128; 3 A. J. R. 92.

The Registrar is not bound to act on an opinion obtained under the Statute of Trusts, which does not conclude the rights of the parties amongst themselves, or protect the assurance fund. *Ex parte Folk*, 6 V. L. R. (L.) 405.

Compare 49 Vic. cap. 13.

The ruling of the Court or Judge under either of these sections (119 and 120) would be appealable, as would also the decision of the Court of Appeal, see sec. 126 *post*.

Caveats ordered to be entered by the Court may be set aside by the Court or a Judge, or a Judge in Chambers. See sec. 130 (15) *post*.

121. If it appears to the satisfaction of the District-Registrar that any certificate of title, or other instrument has been issued in error, (a) ^{Where certificate issued in error, etc., D. R. may summon holder to deliver up.} or contains any misdescription of land, or of boundaries, or that any entry or endorsement has been made in error on any certificate of title or other instrument, or that any such certificate, instrument, entry, or endorsement has been fraudulently or wrongfully obtained, or that any such certificate or instrument is fraudulently or wrongfully retained, he may summon the person to whom such certificate or instrument has been so issued, or by whom it has been so obtained or is retained, to deliver up the same for the purpose of being cancelled or corrected as the case may require, (b) and in case such person refuses or neglects to comply with such summons, or cannot be found, the District-Registrar may apply to ^{In case of refusal may apply to judge.} a judge of the Court of Queen's Bench in Chambers to issue a summons for such person to appear before a judge thereof, and show cause why such grant, certificate or other instrument should not be delivered up to be cancelled or corrected as aforesaid, (c) and if such person, when served with such summons, neglects or refuses to attend before the judge, at the time therein appointed, it shall be lawful for the judge to issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the judge for examination. ^{Arrest on further refusal.}

(a) An error is not only a mistake of fact, but also an error in law. *Per* Stawell, C.J., in *Ex parte Bond*, 6 V. L. R. (L) 458, 463. Anything improperly done or omitted to be done is an error under this section. See *Ex parte Patterson*, 4 A. J. R. 26; 5 A. J. R. 128, and L. R. 2 App. Cases, 110.

(b) See sec. 123 *post*, and sec. 135 Vict. Act. A person entitled to be registered could upon a summons or by mandamus compel the Registrar to exercise this power in case he refuses to do so. *Ex parte Patterson*, 4 A. J. R. 26; *Ex parte Stark*, 4 A. J. R. 114.

(c) See secs. 64 and 68 (4) *ante*, and notes, and notes to next following section.

122. Upon the appearance before the judge of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the said judge to examine such person upon oath, and, in case it appears right so to do, to order such person to deliver up such certificate of title or other instrument, as aforesaid; and upon refusal or neglect by such person to deliver up the same, pursuant to such order, to commit such person to the common gaol of any judicial district for any period not

exceeding six months, unless such certificate of title, or instrument be sooner delivered up, and in such case, or in case such person has absconded, so that summons cannot be served upon him as hereinbefore directed, the said judge may direct the District-Registrar to cancel or correct any certificate of title or other instrument, or any entry or memorial in the Register relating to such land, and to substitute and issue such certificate of title or other instrument or make such entry as the circumstances of the case may require, and the District-Registrar shall obey such order.

The procedure under this and the preceding section would be the same as the rules of procedure and practice in force in the Court of Queen's Bench. See Rule 24, Sch. 8, s. 26 *ante*, and sec. 127 *post*.

Compare section 112 of the R. P. Act of 1885.

Decisions under corresponding provisions (secs. 132 and 133) of the Victorian Statute have been rendered in *Gunn v. Harvey*, 1 V. L. R. (E) 111; and *Campbell v. Janet*, 7 V. L. R. (E) 137. Where certificates were impeached for fraud, it was held that the Court had no jurisdiction to correct or cancel them, and that the proper course was to direct the parties to execute the necessary transfers. Where a voluntary settlement was defeated by a subsequent mortgage, the Court did not order the mortgagee to be registered as absolute proprietor, but directed the trustee of the settlement to execute a mortgage. *Moss v. Williamson*, 3 V. L. R. (E) 221; *Re Biggs*, 11 S. A. L. R. 43; *Biggs v. Waterhouse*, 12 S. A. L. R. 75, 86; but this section (122 Man. Act) appears wider than the 132nd section of the Victorian Statute. The 123rd section of the Manitoba Act *post* has also a general application which appears to have been doubted in the above cited cases in applying the corresponding section 139 of the Victorian Statute.

A person properly entitled to land included by error, fraud or any misdescription of lands or boundaries in any certificate of title may obtain relief by an action of eject-

ment against the person registered as owner through such fraud, error or misdescription, without having recourse to the proceeding provided by these two sections, and likewise in the case of a fraudulent or voluntary transferee or owner holding a prior certificate of title, or where two or more certificates of title have been registered under this Act in respect of the same land. See sec. 67 *ante*.

Where the Court decided that a certificate of title had been issued in error and ordered a new certificate to issue in the name of another person, proceedings were taken under the corresponding sections of the Victorian Statute to have the first certificate of title delivered up; the Court refused to make any order until a person with whom it had been deposited by way of equitable mortgage had been repaid his mortgage debt. *Ex parte Paterson*, 4 A. J. R. 110.

123. In any proceeding respecting land or in respect of any transaction Judge may order D. R. to cancel certificate. or contract relating thereto, or in respect of any instrument, caveat, memorial, or other entry affecting land, it shall be lawful for a judge in chambers, by decree or order, to direct the District-Registrar to cancel, correct, substitute, or issue any certificate of title, or make any memorial or entry in the Register, or otherwise to do every such act or make every such entry as may be necessary to give effect to the judgment, or decree, or order of the court.

Provided that no certificate of title shall be cancelled or set aside save Cancellation allowed in cases excepted. in the cases specially excepted in Section sixty-four of this Act, and provided further that the District-Registrar shall not issue any certificate of title by order of the court unless in such order it is certified that the title of the person to whom the certificate of title is to issue has been found upon investigation to be a good safe-holding title, or unless such has been determined to be the case by the District-Registrar. Certificate not to issue unless title certified.

This proviso would also apply to an order or decree by a Judge in Chambers. See *Appendix, new caveat rules*.

Compare sec. 139 of the Victorian Land Transfer Statute and sec. 113 of the R. P. Act of 1885 as amended by 51 Vic. cap. 22, sec. 10, and see notes to the foregoing section

See secs. 117 *ante* and 129 *post*.

Judge may order production of documents. **124.** After an application has been made to have any land brought under the operation of the new system, a judge in chambers may require all persons having in their possession or custody any deeds, instruments or evidences of title relating to or affecting the land, the subject of such application, to produce the same in the Land Titles Office to the District Registrar or to any Examiner of Titles for his inspection, upon such terms and subject to such conditions and for such charge or fee as the judge making the order shall think just and shall fix: all applications to be made to a judge under this section may be made by summons in chambers by the applicant, owner or by the person to whom he may have directed a certificate of title to be issued.

See sec. 68 *ante*. Compare 50 Vic. cap. 11, sec. 40.

Judge may summon witnesses. Atty-Gen'l right to be heard. **125.** Upon the hearing of any matter arising under this Act, a judge in chambers or the court may summon any person to appear, either to give evidence, or be made a party in the cause, and any person interested, and the Attorney-General for the Province of Manitoba may appear and be heard before such judge or court, or any court of appeal to which such cause or matter may be taken, and such judge or court may dispose of the matter, and award costs to any of the parties in such manner as the said judge or court may think proper.

See Rule 24, Sch. 8, sec. 26 *ante*, notes to secs. 124 and 126, and sec. 47, Act of 1890 in Appendix.

Order of Judge appealable. **126.** Any order made by such judge or court or court of appeal in any matter arising under this Act, shall be subject to appeal in the same manner as any other order made by such judge or court, and all parties to the cause, and the Attorney-General of the Province of Manitoba shall have the right to appeal.

See note to next following section.

Compare sec. 138 of the Territorial Act *post*.

Right of Appeal Procedure. **127.** In the conduct of actions and other proceedings provided for under this Act, there shall be the same rights of appeal, and the same rules of procedure and practice shall apply as are in force or exist for the time being in respect of actions and other proceedings of a similar nature in the court in which such action or proceeding may be tried or taken, and such court shall have power to make additional, or alter rules and regulations, and to make new, or alter forms of proceedings, and from time to time repeal, alter or vary the then existing rules and regulations, and to make new rules and regulations and forms of proceedings for the practice and procedure of the court in regard to matters which may arise under the provisions of this Act.

Court may make rules.

Compare sec. 114 of R. P. Act 1885, and sec. 152 of the Victorian Statute, under which it was intimated (*Hodgson v. Hunter*, 3 A. J. R. 13) that the Judges might direct the details of proceedings in matters of caveat, bringing the parties before the Court, and putting doubtful questions into a course of legal determination within a limited time so as to uphold the policy of the Act, which is to bring all titles into a state of simplicity.

Thus far no rules or regulations have been made by the Court under this section.

An appeal will lie from a verdict rendered upon the trial of an issue under the provisions of this Act; and upon such appeal affidavits cannot be read when they are not mentioned in the notice of appeal, or of the intention to read which notice has not been given until two days before the argument on the motion, unless satisfactory reasons are assigned why an earlier notice was not given: *Morrice v. Baird*, 6 Man. L. R. 241. Upon a reference by the Registrar-General no material other than the case submitted, together with any documents transmitted, can be considered: *Joyce v. Scarry*, 6 Man. L. R. 281.

128. The court shall have the power to fix and regulate from time to time the fees payable upon all proceedings before the court, and until the said court shall otherwise order, the fees payable shall be according to the fees payable in respect to proceedings of a similar nature in the court.

See note to last preceding section. Compare sec. 115 R. P. Act of 1885. No special tariff has as yet been fixed by the Court.

129. Nothing contained in this Act shall take away or affect the jurisdiction of any competent court on the ground of actual fraud, or over contracts for the sale or other disposition of land, or over equitable interests therein.

Equitable jurisdiction of court not affected.

See sec. 123 and notes to secs. 64, 85 and 86 *ante*.

Compare sec. 157 Victorian Statute and sec. 133 R. P. Act of 1885. See notes to sub-section 4 of section 130, and also notes to sec. 149 *post*.

The effect of this section is not so limited or restricted as that of the corresponding clause of the Victorian Statute, the effect of which was discussed in *R. v. McCooley*, and *R. v. Johnson*, 5 V. L. R. (L.) 38.

CAVEATS AFTER APPLICATION IS MADE TO BRING LAND UNDER THE NEW SYSTEM.

NOTE.—The following provisions respecting caveats are practically those of section 107 of the R. P. Act of 1885 as amended by 49 Vic. cap. 28, sec. 15; 50 Vic. cap. 11, sec. 37; and 51 Vic. cap. 22, sec. 13; omitting, however, the provisions of these Acts as to the filing of caveats before any application has been made to bring lands under the "new system."

Who may lodge caveat.

Form of.

Applicant to be notified.

Caveat to lapse in one month unless proceedings taken.

130. Any person claiming any estate or interest in the land described in the application to bring the same under the new system may, at any time before the registration of the certificate of title, lodge or have lodged on his behalf a caveat with the District-Registrar in the form in Schedule O (a) to this Act, forbidding the bringing of such land under the new system.

(1) The District-Registrar upon receipt of such caveat shall notify the applicant or his solicitor or agent of the same and shall not bring the land under the new system until such caveat shall have been withdrawn or shall have lapsed, as hereinafter provided, or until an order shall have been obtained from a court of competent jurisdiction or a judge thereof sitting in chambers, discharging the same (b).

(2) After the expiration of one month from the receipt thereof, such caveat shall be deemed to have lapsed, unless the person by whom or on whose behalf the same was lodged shall within that time have taken proceedings under the rules in Schedule R to this Act, to establish his title to the land or his right as set out in such caveat. (c)

(a) See also sub-sec. 8 *post*.

See note to sec. 65 *ante*, *re Jackson & MacPherson* where the Registrar-General excused an adverse occupant from the necessity of filing a caveat. In *ex parte Brown*, 5 V. L. R. (L.) 5, it was held that a caveator in possession and basing his title on adverse possession could not get a restraining order to delay registration under provisions similar to sub. sec. 5 *infra*.

(b) For form of notice see note to sub-sec. 4.

See sec. 46 *ante* and Rule 10 Sch. R. *infra* as to costs, etc., where the application is withdrawn.

(c) He must also comply with the requirements of sub-secs. 8 and 11 of this section, and Rules 1, 2 and 13, Sch. R. *infra*. It may be set aside on application of the owner under sub-sec. 12 *infra*. No restraining order is provided as in sub-sec. 5 *infra*. But see *Appendix*.

SCHEDULE O.

FORM OF CAVEAT FORBIDDING THE LAND TO BE BROUGHT UNDER THE NEW SYSTEM AFTER APPLICATION HAS BEEN MADE FOR THAT PURPOSE.

To the District-Registrar,

Take notice that I, (*insert name and addition*) claim (*particularize the estate or interest claimed*) in the land described as (*description of land*), in the advertisement * relating to the application of (*state applicant's name and addition*, or if there is no advertisement, state "in the application of") and I forbid the bringing of such land under the operation of "The Real Property Act of 1889." I appoint _____ as the place at which notices and proceedings thereto may be served.

Dated this _____ day of _____ one thousand eight hundred and _____

Signed in the presence of _____

*MEMO: As no advertisement is now required the land may be described in any manner sufficient for its proper identification.

CAVEATS AFTER LAND IS BROUGHT UNDER THE NEW SYSTEM.

130. (3) Any beneficiary or other person claiming any estate or interest in land under the new system, or in any lease, mortgage or encumbrance, under the new system may lodge or have lodged in his behalf a caveat with the District-Registrar in the form in Schedule P (d) to this Act, or as near thereto as circumstances will permit, forbidding the registration of any person as transferee or owner of, or of any instrument affecting such estate or interest either absolutely or until after notice of the intended registration or dealing be given to the caveator, or unless such instrument be expressed to be subject to the claim of the caveator as may be required in such caveat. (c)

Caveat after title registered under new system.

(d) See sub-sec. 8.

(e) An equitable mortgagee might thus protect his rights. See Rule 17, Sch. S, secs. 26 and 117 *ante*, and notes to sec. 68 and to sec. 122 *ante*.

SCHEDULE P.

CAVEAT FORBIDDING REGISTRATION OF AND CHANGE IN OWNERSHIP OR ANY DEALING WITH ESTATE OR INTEREST IN LAND UNDER THE NEW SYSTEM.

To the District-Registrar, -

Take notice that I, *(insert name and addition)* claim *(specify the estate or interest claimed)* in *(describe land)* standing in the Register Book in the name of _____ and I forbid the registration of any person as transferee or owner of or of any instrument affecting the said estate or interest, absolutely *(or until after notice of any intended registration or registered dealing be given to me at the address hereinafter mentioned, or unless such instrument be expressed to be subject to my claim as the case may require)*. I appoint _____ as the place at which notices and proceedings relating to this caveat may be served.

Dated this _____ day of _____ one thousand eight hundred and _____

Signed in presence of)

D. R. to
note time
of receipt
and notify
owner.

130. (4) Upon the receipt of such caveat the District-Registrar shall make a memorandum thereon of the date, hour and minute of the receipt thereof, and shall enter a memorandum thereof in the Register Book and shall forthwith send a notice of such caveat through the postoffice or otherwise to the person against whose title such caveat has been lodged;

Compare sec. 76, and Rules 8, 9, 10, 13, 14, and 16, Sch. S, sec. 26 *ante*.

FORM OF NOTICE TO CAVEATEE.

(The usual formal heading.)

To A. B. of *(additions as in the certificate)* registered owner of the above lands *(or mortgagee, etc., as the case may be)*

You are hereby notified that on the _____ day of

A. D. 18 _____ at _____, o'clock a caveat was filed by C.

D. of, etc, *(as in caveat)* forbidding registrations affecting your estate or interests in the said lands, except subject to his claim as set forth in said

caveat and the affidavit verifying the same; and you are further notified that the said C. D. has given in the county of in Manitoba as his address or place at which notices and proceedings relating to such caveat may be served.

Dated at the Land Titles Office, at
of 18

this
District-Registrar.

130. (5) Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement or by the District-Registrar, (f) every caveat lodged against an owner of land, mortgage or encumbrance under the new system shall be deemed to have lapsed upon the expiration of fourteen days after notice given to the caveator that such owner has applied for the registration of a transfer or other dealing, (g) unless before the expiration of the said period of fourteen days the caveator or his agent appears before the court or a judge, or a judge in chambers, and gives such undertaking or security or lodges such sum in court as such court or judge may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, or gives such security or lodges such sum in court as such court or judge may consider sufficient to answer the cost of the caveatee in such proceedings as may be taken under such caveat, then and in such case such court or judge may by order direct the District-Registrar to delay registering any dealing with the land, mortgage or encumbrance for a further period to be specified in such order, or may direct the caveator to take proceedings under the rules in Schedule R hereunder or may make such other order as may be just.

(f) Caveats entered by order of the Court or by the District-Registrar under sub-sec. 5 of sec. 68 *ante*, may be set aside by the Court or a Judge on a special application (sub-sec. 15 *infra*). An order setting any other caveat aside may be obtained under sub-sec. 12 *infra*.

The Crown may have rights decreed on the ground of escheat and an injunction against dealings being registered: *Attorney-General v. Hoggan*, 3 V. L. R. (E.) 111; an injunction against registrations issued in *Archibald v. Archibald*, 5 V. L. R. (E.) 180; and in Australia there appear to be many cases in which the Courts have heard suits and granted restraining orders and injunctions: *Stockdale v. Hamilton*, 4 S. C. R. 313; 5 S. C. R. 180; *Ex*

parte Hamilton, 3 S. C. R. 311 (New South Wales); *Ex parte Bissel*, 5 V. L. R. (L.) 53; *Hodgson v. Hunter*, 3 A. J. R. 13; *Geraghty v. Russell*, 5 A. J. R. 89; and the procedure may apparently be by Rule *nisi*, *Ex parte Gunn*, 3 V. L. R. (L.) 36. After the lapse of caveat it was held *Ex parte Aylwin*, 4 V. L. R. (L.) 116, that the Court or a Judge had no power to grant an order restraining the Registrar from bringing the land under the Act; but see sub-sec. 14 *infra*.

As to liens, etc., see sec. 117 and notes *ante*.

(g) This notice may be in a form similar to the estoppel. Notice under sec. 52 *ante*; it may be given officially by the District Registrar or by the caveatee personally. It may be served as provided by secs. 53-55 *ante*, or an order for substitutional service may be obtained under Rule 14, Sch. R, *infra*.

See Rules 1, 2, 6 and 13, Sch. R, *infra*.

D. R. not to enter dealing while caveat in force unless subject to caveator's rights.

130. (6) So long as any caveat remains in force prohibiting the transfer or other dealing with any land, mortgage or encumbrance, the District-Registrar shall not enter in the Register Book any memorandum of transfer or other instrument purporting to transfer or otherwise deal with or affect the land, mortgage or encumbrance, in respect to which such caveat is lodged, unless such instrument be expressed (*h*) to be subject to the claim of the caveator as may be required in such caveat.

(*h*) Special mention of the caveat should be made in the instrument.

Entry of lapse, etc.

(7) An entry shall be made by the District-Registrar in the Register of the withdrawal, lapse, or removal of any caveat or of any order made by the court. (*i*)

(*i*) This entry is made on the suggestion of the party interested in having the caveat removed and the registration of dealings resumed. See sub-secs. 4 *ante* and 13 *infra*. A fee of 50c. is payable before such entry.

CAVEATS GENERALLY.

Caveats what to state.

130. (8) Every caveat filed with the District-Registrar shall state the name and addition of the person by whom or on whose behalf the same is

filed and (except in the case of a caveat filed by order of the court or by the District-Registrar) (j) shall be signed by the caveator, his attorney or agent (k) and shall state some address or place within the Province of Manitoba at which notices and proceedings relating to such caveat may be served and shall be supported by an affidavit or statutory declaration stating the nature of the title (l) under which the claim is made, and that in the belief of the deponent the person by whom or on whose behalf the caveat is filed has a good and valid claim upon the said lands or upon the estate, interest or charge intended to be affected by the same and that the caveat is not filed for the purpose of delaying or embarrassing the applicant or registered owner or any person claiming through him, which affidavit or declaration may be in the form in Schedule Q hereunder.

To be signed.
Affidavit or declaration in support.
Form of affidavit.

(j) See sub-sec. 15 *infra*.

(k) In Victoria (Australia) proof of agency is required except where the agent is a solicitor (*A'Becket*, 82).

(l) In May, 1889, it was held (Bain, J.) in *McArthur v. Glass*, 6 Man. L. R. 224, where the affidavit did not state the 'nature of the title' that the caveat had been imperfectly filed, and should be removed from the Register, as the filing of a caveat complying with the Statute was a condition precedent to the jurisdiction of the Court to entertain a petition; but subsequently, *Re McArthur and Glass*, 6 Man. L. R. 301, Mr. Justice Killam decided that it was not necessary to file affidavits in support of a petition based upon a caveat in the Land Titles Office, and that cause may be shewn by argument upon the allegations of the petition, or by affidavits; after which the judge may, if necessary, permit the petitioner to adduce evidence, or may direct an issue, and made the following remarks:

"I cannot find that it has ever been decided whether affidavits or other evidence should be filed with the petition of the caveator or before the caveatee is asked to show cause. Rule 5 of Schedule H of the Act of 1887 seems to contemplate that at some stage affidavits may be filed in support of the petition, but it speaks of this as a contingency only. Rule 4, however, provides, that 'If the

caveatee shall not appear on the day appointed for the hearing, the court may, upon due proof of the service of such petition, make such order in the absence of the caveatee, either for the establishment of the right of the caveator or as the nature and circumstances of the case may require, as to the Court may seem meet.' Thus, it is evident that, unless cause be shown, it is unnecessary to support the petition by evidence. The affidavit required by sub-section 11 of section 37 (Sch D, 1887) to be filed with the caveat is sufficient to show the good faith of the caveator, and is evidently demanded to guard against the abuse of the practice, so that for that purpose there is little reason to require the petition to be supported by evidence before allowing the caveator to have an issue tried or some other investigation ordered."

"The practice which I shall adopt hereafter will be to hear the petition without affidavits or other evidence in support if none be filed; to allow cause to be shown, by argument that the case made by the petition is sufficient to show a right, or by affidavit either directly meeting allegations of fact in the petition or showing fresh facts, and, upon thus learning the questions in dispute, to allow the petition to be supported by affidavits or other evidence, or, without such, to direct the trial of an issue, direct inquiries or otherwise deal with the matter. This will, of course, not prevent a petitioner from filing affidavits or other evidence in advance, if, knowing the cause proposed to be shown he shall deem this advisable as saving expense or otherwise simplifying the matter."

The provisions of this sub-section, however, seem as a rule applicable to "*caveats generally*," and require good faith and grounds for belief in the validity of his title to be shewn by every caveator upon filing his caveat, and it is probable that a refusal on the part of the District Registrar

to receive a caveat upon the grounds mentioned in the judgment of Mr. Justice Bain would be upheld as in conformity with the policy of the Statute.

Schedule Q refers to the caveat as *annexed* to the affidavit.

SCHEDULE Q.

FORM OF AFFIDAVIT IN SUPPORT OF CAVEAT.

I, A. B., make oath and say (or solemnly declare) as follows:

(1) The land affected by the caveat dated the _____ day of _____ hereunto annexed, lodged by me with the District-Registrar, is the land described in the schedule hereunto, and my interest in the said lands entitles me to object to any disposition of the said land being made without my consent, and the nature of my interest is as follows:

(Here state particulars of caveator's interest.)

Or substitute for the above, as the case may require the following:

[I, A. B., make oath and say [or solemnly declare] as follows:—I claim the land [or an interest therein, as the case may be] mentioned in the caveat hereunto annexed and described in the schedule hereto [here state the nature of the estate or interest claimed and the grounds upon which such claim is founded].

(2) I believe that I have a good and valid claim upon the said lands, and I say that this caveat is not being filed for the purpose of delaying or embarrassing the applicant or any person claiming under him.

The schedule above referred to

(Here insert ordinary description of land to be affected by caveat.)

(9) The caveator may, by notice in writing to the District-Registrar (*m*) withdraw his caveat at any time, but such withdrawal shall not prejudice the power of the court or judge to make an order as to payment by the caveator of the costs and damages of the caveatee incurred prior to the receipt by the caveatee of notice in writing (*n*) of the withdrawal of such caveat.

(*m*) This notice has the effect of prejudicing the claim of the caveator to the lands and consequently should be attested and verified by a witness in the same manner as other instruments intended for registration. See sec. 74 *ante*. It should be signed by the caveator or by some person specially authorized to do so under a registered power of attorney. See secs. 110 and 111 *ante*.

(n) A copy of the notice of withdrawal might be served on the caveatee before it is filed.

If caveat wrongfully lodged compensation may be ordered to be made.

(10) Any person other than the District-Registrar lodging or continuing any caveat wrongfully and without reasonable cause shall be liable to make compensation to any person who may have sustained damage thereby, and such compensation may be recovered by proceedings at law if the caveator has withdrawn such caveat and no proceedings shall have been taken by the caveatee as herein provided, but if proceedings have been taken by the caveatee then such compensation shall be decided by the court or judge before whom proceedings have been taken.

When caveats deemed to have lapsed.

(11) Every caveat except a caveat filed by the District-Registrar or by order of the court (o) shall be deemed to have lapsed after the expiration of the time limited by this section, (p) in such case for proceeding thereunder, unless the person by whom or on whose behalf the same was lodged shall within that time (p) have taken the prescribed proceedings to establish his title to the land, mortgage or encumbrance, or his right as set out in such caveat, and shall have filed with the District-Registrar evidence to his satisfaction, of such proceedings having been taken. (q)

(o) See sub-secs. 15 and 16 *infra*.

(p) See sub-secs. 2 and 5 *ante*. But the time may be extended by order of a Judge, sub-sec. 16 *infra*.

(q) See Rules 2 and 13, Sch. R *infra*.

The practice of the Land Titles Offices is to require the petition filed under Rule 2 to be certified as to filing by the prothonotary or clerk of the Court, or the filing proved by affidavit when the petition is produced for registration, and this filing is received as sufficient proof of proceedings having been taken.

Applicant or owner may apply to have caveat discharged.

(12) In the case of any caveat filed (except a caveat filed by the District-Registrar or by an order of the court) (r) the applicant or registered owner may, at any time within the time limited by this section (s) for the caveator to take proceedings thereunder, apply to the court, or a judge, or a judge in chambers, for a summons calling upon the caveator to show cause why such caveat should not be withdrawn or discharged, and upon the return of such summons the said court or judge, upon proof that such caveator has been duly served with such summons and upon such evidence as the said court or judge may require, may, in the absence of such caveator or otherwise, make such order in the premises and as to costs as

Procedure.

to such court or judge may seem just; and where a question of right or title requires to be determined the proceedings followed shall be, as nearly as may be, in conformity with the rules of court in relation to civil cases. (t)

(13) In every case in which a caveat shall have lapsed or been withdrawn, or shall have been discharged or withdrawn by order of the court, or a judge, the District-Registrar may at once proceed, as if no caveat had been filed (u) unless in the meantime he shall have been served with an order of the court or of a judge or judge in chambers, staying such proceedings.

After disposition of caveat D.R. may proceed.

(r) See sub-sec. 15 *infra*.

(s) See sub-secs. 2 and 5 *supra*.

(t) See sec. 127 and notes *ante*.

(u) See sub-sec. 7 *supra*.

The practice of the Land Titles Offices is to require the lapse or withdrawal to be entered across the memorial of caveat on the application before proceeding with the investigation of title; and in cases where the certificate of title has been issued, a similar entry is required in the register before dealings can be registered, except subject to the caveat. (See Appendix, sec. 43, Act of 1890.)

(14) After a caveat shall have lapsed or been withdrawn, or discharged except as in this section mentioned, it shall not be lawful for the same person, or for any one on his behalf to lodge a further caveat, or file a *lis pendens* (r) under any proceeding in court in relation to the same matter, but nothing herein contained shall prejudice the right of the District-Registrar to enter any caveat under the powers vested in him by this Act, (w) and a judge or judge in chambers may, if he thinks proper, upon application made to him for that purpose, and upon such terms as to costs, or otherwise as he may consider just, order that a new caveat be filed, and such order shall fix a time within which the caveator must proceed upon such caveat under the rules in schedule R to this Act. (x)

Second caveat not to be filed except by D. R. or by order of judge.

(v) As to *lis pendens* see sec. 131 *post*.

There is no provision prohibiting the filing of a caveat after a certificate of *lis pendens* has been discharged.

(w) See sec. 68 (5) *ante*.

(x) A caveat filed by order of a Judge under this subsection would lapse as a matter of course on the expiration

of the time limited, unless an order under sub-sec. 16 *infra* be obtained extending the time fixed by the first order permitting a second caveat to be filed.

Compare sub-secs. 2, 5, 7, 8 and 11 *supra*, and the next following sub-section.

(15) In the case of a caveat filed by the District-Registrar or by order of court, the applicant or registered owner may, if he so desires, apply to the court or judge or a judge in chambers for a summons calling upon the person on whose behalf such caveat has been filed to show cause why such caveat should not be withdrawn or discharged, and in case the person on whose behalf such caveat has been filed is an infant, lunatic, or person of unsound mind, without guardian or committee, the said court or judge may direct in such summons that it be served on the official guardian of the court or some other person to be named therein, and may impose upon the applicant such terms as to the costs of such guardian or other person appointed by such order as may seem just, and upon the return of such summons, if the same shall appear to have been duly served upon the proper persons, such court or judge may make such order in the premises either as to dismissing such summons discharging or withdrawing such caveat, or directing any of the parties to commence proceeding under the rules of Schedule R to this Act, as to the said court or judge may seem just and proper.

Extension
of time for
proceeding
on caveat.

(16) At any time before the expiration of the time limited for proceeding upon a caveat (y) upon application on behalf of the caveator after notice to the caveatee, the court or a judge thereof for sufficient cause shown, and subject to such conditions as may seem proper, may extend the time for proceeding under such caveat for a further period to be specified in the order made upon such application which shall forthwith be lodged in the Land Titles office and filed with the caveat.

(y) See secs. 2 and 5 *supra*, and Rules 2 and 13, Sch. R. *infra*. See sec. 43, Act of 1890, in Appendix.

Under the provisions of sec. 24 of the Victorian Statute giving the Court or Judge restraining powers, the Court was held to have jurisdiction to make an order although no suit or action had been instituted, at least where no other remedy was open to the caveator; The procedure may be by rule *nisi* and absolute: *Ex parte Gunn*, 3 V. L. R. (L.) 36; *Ex parte Beissel*, 5 V. L. R. (L.) 53; *Hodgson v. Hunter*, 3 A. J. R 13.

Compare sec. 107 of the Act of 1885 as amended in 1887 and 1888.

SCHEDULE R.

RULES AND REGULATIONS FOR PROCEDURE IN THE MATTER OF CAVEATS.

1. The caveator, for the purpose of establishing his claim, may take ^{Petition to} proceedings by way of petition to the court. Such petition shall be filed ^{enforce} with the prothonotary, and shall contain as concisely as may be, a state- ^{caveat.} ment of the material facts on which the caveator relies. Such statement shall be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate and distinct allegation, and shall state specifically what estate, interest or charge the caveator claims, and the court or a judge thereof shall, upon the filing of such petition, appoint a time for hearing the same. Such hearing may take place before the court or a judge thereof, or the District-Registrar, or such other person or persons as the said court or a judge may direct, and such hearing may be heard partly by one and partly by one or more persons as the nature and circumstances of the case may require, as to such court or judge may seem meet.

In *Clarke v. Scott*, 5 Man. L. R. 281, it was held: That the petition was defective in not showing the petitioner's claim of title, and that the petition need not show upon its face that it is filed in time. See note *l*, p. 187 *supra*.

2. The caveator shall cause a copy of such petition to be filed with the District-Registrar, and a copy with notice of the time appointed for hear- ^{Petition to} ing shall be served, three days at least before the time appointed for the ^{be filed and} hearing of the said petition, on the caveatee. ^{served.}

3. On the day of hearing, the caveatee is personally or by counsel to ^{Hearing.} show cause, and if necessary by affidavit, why the prayer of such petition should not be granted.

4. If the caveatee shall not appear on the day appointed for the hear- ^{Order may} ing, the court may, upon due proof of the service of such petition, make ^{be made in} such order in the absence of the caveatee, either for the establishment of ^{absence of} the right of the caveator or, as the nature and circumstances of the case ^{caveatee.} may require, as to the court may seem meet.

5. Upon the hearing of the petition and upon reading the affidavits, if any filed in support thereof, and any documents produced to the court and hearing what may be alleged on behalf of the caveatee and caveator, the court may, if it shall think fit, dismiss the petition; or may make an order establishing the right of the caveator or directing any inquiries to

be made or other proceedings taken for the purpose of ascertaining the rights of the parties and for that purpose may adjourn the hearing and order the petition to be served on any other person or persons the court may consider necessary, and every person so served shall attend at the adjourned hearing of the petition, and be subjected to such further order as the court may cause to be made.

See Rule 14 *infra* as to substitutional service.

What order
may be
made.

See sec. 37,
Act of 1890,
Appendix.

6. The court may, if it shall think fit, direct any question of fact brought before it to be decided before a judge thereof, and for that purpose may direct an issue to be tried wherein the caveator shall be plaintiff and the caveatee defendant. And the said court shall direct when and where the trial of such issue shall take place; and the court may also direct all parties to produce all deeds, books, papers and writings in their or in either of their custody or power, on oath before the District-Registrar or prothonotary, or such other officers of the court as the court may direct, on a day to be named, and each party shall have liberty to inspect the same and take copies thereof at his own expense and such of them as either party shall give notice to be produced at the trial shall be produced accordingly, and the issue may be in the form following:—

“In the Queen’s Bench.

“M. Mitoba,)
“To Wit:)

“The day of
in the year of our Lord 18

Form of
issue.

“WHEREAS A. B., affirms and C. D. denies (*here state the questions of fact to be tried*), and it has been ordered by (the C. J. or other judge, as the case may be) that the said questions shall be tried by a judge).

“Therefore let the same be tried accordingly.”

And in case the parties differ upon the questions to be tried, the court may either settle the same or refer them to the master.

Where a certificate of title was applied for a caveat was filed and an issue ordered to be tried with the caveator as plaintiff and the caveatee as defendant. The caveatee (applicant for registration of title) applied for security for costs as the caveator resided in Ontario, and the summons was dismissed, Taylor, C.J., holding that the applicant for registration of title was in reality the plaintiff and could not obtain security for costs: *McCarthy v. Badgley*, 6 Man. L. R. 270. On the analogy of interpleader proceedings compare *Belmonte v. Aynard*, 4 C. P. D. 221, 352, and *Mc-*

Phillips v. Wolf, 4 Man. L. R. 300, which latter cases were followed in *McCarthy v. Badgley*. See Rule 10, *infra*.

A disputed question of fact will not be tried upon affidavit, but an issue directed; *Clarke v. Scott*, 5 Man. L. R. 281; in this case the form of issue was given.

7. If the court shall find that the caveator is entitled to all or some of the relief claimed by him, the order of the court shall declare what is the estate, interest, lien, or claim to which the caveator is entitled, and the court may make such order as the circumstances may require, and shall have power to afford the caveator the same relief as in an ordinary action.

8. Every order of the court made under these rules shall have the same effect as a judgment or order of the court given or made in any action: and the District-Registrar shall make such entries in the Register Book and do such things as may be necessary to give effect to the order of the court.

9. If, at the hearing of such petition, it shall appear to the court that for the purpose of justice it is necessary or expedient that an action should be brought, the court may order such action to be brought accordingly, subject to such terms as to the costs or otherwise as may be thought proper.

10. In all proceedings of the court, either by the caveator or caveatee, the court may make such order as to the costs of the proceedings in the court and incidental to filing the caveat as the court shall see fit.

No costs of appeal will be allowed where the case is disposed of on a point which has not been argued; *Clarke v. Scott*, 5 Man. L. R. 281. As to charging order see *Wishart v. Bonneau*, 5 Man. L. R. 132. See note to Rule 6, *re McCarthy v. Badgley*, as to security for costs, *ubi supra*.

11. The court, or a judge thereof, may, without prejudice to the exercise of any other power of the court upon the application of any person interested in any land, make an order restraining for a time or until the occurrence of an event to be named in such order, or generally until further order, the registration of any dealing with land and may impose any terms and conditions upon making such order.

12. The court, or a judge thereof, may discharge any such order with or without costs and generally act in the premises in such a manner as the justice of the case requires; and the District-Registrar, without being a party to the proceedings, upon being served with any order or copy thereof, shall obey the same.

Petition to
be served
within 30
days.

13. Unless the petition, filed under such caveat, shall have been served on all proper parties within thirty days next after it has been filed with the District-Registrar or within such further time as a Judge in Chambers may have ordered, any person interested may apply to a Judge in Chambers, for, and such Judge in Chambers may grant an order dismissing and discharging such petition and caveat for want of prosecution and such dismissal shall be deemed to have been a dismissal on its merits.

Substitu-
tional ser-
vice.

14. When service of any proceedings under these rules is required to be made upon any person who cannot after due diligence be found within the Province of Manitoba, a Judge in Chambers may, in a proper case, order that service of such proceedings may be effected substitutionally in such manner as to such Judge may seem proper, and such substitutional service shall have the same effect as personal service upon the person intended to be affected thereby.

Vide Rule 5 *supra*. New rules added in Appendix.

NOTE: The Lieutenant-Governor in Council has power to alter the rules, and to make rules in cases left unprovided for by the Act. *Vide* sec. 26 *ante*.

Lis Pendens.

Lis pendens.

131. Any party to a suit, or his solicitor, or any person claiming to be interested in such suit may, except as hereinbefore provided, file with the District-Registrar a *lis pendens* affecting lands, mortgage or encumbrance, subject to the new system, and from and after the filing of such *lis pendens* with the District-Registrar the same shall operate as a caveat against the transfer of the land, mortgage or encumbrance mentioned in such *lis pendens*, and no transfer or other dealings with such land, mortgage or encumbrance shall be made except subject to the right or interest of such party or person claiming to be interested in such suit as aforesaid, unless said *lis pendens* shall have been previously discharged, or the bill of complaint or other proceeding in court dismissed by an order of the court or judge thereof and duly filed with the District-Registrar.

Effect of
filing.

A certificate of *lis pendens* cannot be filed after a caveat shall have lapsed or been withdrawn or discharged except upon an order of a Judge made on special application as provided by sub-sec. 14 of sec. 130 *ante*. There is no provision prohibiting the filing of a caveat after the termination of a suit respecting which a *lis pendens* has been registered, nor the filing of any number of such certifi-

cates referring to successive suits in relation to the same matter.

This clause was not in the R. P. Act of 1885, but was introduced by sec. 38 of the amending Act of 1887.

ASSURANCE FUND.

132. Any person deprived (a) of land or of any estate or interest in land in consequence of fraud or misrepresentation in bringing of such land under the new system, or in the registration of any other person as proprietor of such land, estate or interest, or in consequence of any error, omission or misdescription of (b) any certificate of title or in any entry or memorial in the Register, (c) may bring and prosecute an action at law for the recovery of damages against the person by whose fraud, error, omission, misrepresentation, misdescription or wrongful act such person has been deprived of his land or of his estate or interest therein. (d) The bringing or prosecuting of an action as aforesaid shall not prevent proceedings being taken against the District-Registrar in respect of any loss or damage not recovered in such action; provided that no action shall in such case be brought against the District-Registrar without first proceeding as above provided, unless authorized by the fiat of the Attorney-General. (e)

(a) As to what constitutes a deprivation, see *Bonnin v. Andrews*, 12 S. A. L. R. 153.

(b) No doubt intended for "in any certificate of title."

(c) *Quære*, whether errors, omissions, etc., in a certificate of charges, or a certified copy or a provisional certificate, would entitle to compensation a person to whom loss or deprivation of property occurred in consequence, of such error, etc.; see secs. 66, 68 (7), 109, and Rule 20 Sch. S, sec. 26 *ante*; also secs. 146 and 147 *post*; or would the recourse be against the fund only as provided in sec. 135 *post*?

(d) As to the effect of improperly lodging liens, etc., compare decision as to *fi. fa.* and sheriff's deed lodged under Victorian Statute in *Hassett v. Colonial Bank of Australasia*, 7 V. L. R. (L) 380. It does not appear to be essential that the person against whom action is brought

has been registered as proprietor. *Fotheringham v. Archer*, 5 W. W. and A'B. (L) 95. Nor does it seem that fraudulent misrepresentation is necessary. *Per Higginbotham, J.*, in *Hassett v. Col. Bank of Australasia*, 7 V. L. R. (L) 388.

(e) Sec. 23 *ante* indemnifies officers against liability for *bona fide* acts or omissions in the exercise or supposed exercise of powers under the Act. See Appendix.

Section 135 *post* provides for actions against the District-Registrar as nominal defendant in cases of omissions, mistakes or misfeasances by him or any of his officers or clerks (*i.e.*, officials appointed to the Land Titles Offices, see secs. 5, 6 and 7 *ante*) made in a similar *bona fide* manner.

The case of fraud or collusion by officials does not appear to have been clearly provided for.

All such actions may be bound by limitations or by estoppel, see sec. 52 *ante* and 137 *post*.

Purchasers, mortgagees and occupants in good faith, and for valuable consideration are protected by secs. 64, 65 and 67 *ante* and 133 *post*; and knowledge of a trust or unregistered interest is not of itself to be imputed as fraud; see sec. 85 *ante*.

As to when the assurance fund is liable and the extent to which it is liable, see secs. 134 and 139 *post*. There is no proviso as to what damages shall be recoverable as in the Victorian Land Transfer Statute, sec. 144; consequently actual damages would be assessed under this section.

133. Nothing in this Act contained shall be so interpreted as to leave, subject to action for recovery of damages as aforesaid, or to action of ejectment, or to deprivation of the estate, or interest in respect to which he is registered as owner, any purchaser or mortgagee *bona fide* for valuable consideration of land under the new system, on the plea that his vendor or mortgagor may have been registered as proprietor, through fraud or error, or may have derived from or through a person registered as owner through fraud or error, and this whether such fraud or error shall

Purchasers and mortgagees protected in such cases.

consist in wrong description of the boundaries or of the parcels of any and or otherwise howsoever.

Compare secs. 64, 65, 67, 77 and 85 *ante*, and sec. 148 *post*.

The effect of the corresponding section in the Victorian Statute, (sec. 145) is commented on *per* Gwynne, J., in *Brady v. Brady*, 8 S. A. L. R. 219, 230.

134. In case the person against whom such action for damages is directed to be brought as aforesaid shall be dead, or cannot be found within the Province, then in such case it shall be lawful to bring such action for damages against the District-Registrar as nominal defendant for the purpose of recovering the amount of the said damages and costs against the Assurance Fund, and in any such case, if final judgment be recovered, and also in any case in which damages may be awarded in any action, as aforesaid, and the sheriff shall make a return of *nulla bona*, or shall certify that the full amount, with costs awarded, cannot be recovered from such person, the Provincial Treasurer, upon receipt of a certificate of the court before which said action was tried, shall pay the amount of such damages and costs as may be awarded, or the unrecovered balance thereof, as the case may be, and charge the same to the account of the Assurance Fund.

If registered owner dead or cannot be found be found action against D. R. as nominal defendant

As to limitation of actions, see sec. 138 *post*.

As to liability of assurance fund, see 139 *post*.

See note (e) to sec. 132 *ante*.

135. Any person sustaining loss or damage (a) through any omission, mistake or misfeasance of the District-Registrar, or any of his officers or clerks in the execution of their respective duties, under the provisions of this Act, (so far as applicable to the new system) and any person deprived of any land or of any estate or interest in land through the bringing of the same under the provisions of the new system or by the registration of any other person as owner of such land, or by any error, omission or misdescription in any certificate of title, or in any entry or memorial in the Register Book, and who by the provisions of this Act is barred from bringing action of ejectment or other action for the recovery of such land, (b) estate or interest, may, in any case in which the remedy by action for recovery of damages as hereinbefore provided is barred, (c) or when any damage has been sustained through any omission, mistake, or misfeasance of the District-Registrar in the granting of a certificate of charges provided for in Section one hundred and nine (109), (d) bring an

Action for damages against D. R. as nominal defendant in certain cases.

action against the District-Registrar as nominal defendant for recovery of damages; and in case the plaintiff recovers final judgment against such nominal defendant, then the court or judge before whom such action may be tried, shall certify to the Provincial Treasurer the fact of such judgment and the amount of damages and costs recovered and the said Treasurer thereupon shall pay the amount of the said damages and costs to the person recovering the same, and shall charge the same to the account of the Assurance Fund. Provided always, that notice in writing of every such action, and of the cause thereof (e) shall be served upon the Attorney-General of the Province and also upon the District-Registrar one calendar month at least before the commencement of such action.(f)

Pro. Treas. (a) The Provincial Treasurer shall pay the amount of any judgment to pay amount of judgment. obtained payable out of the Assurance Fund, notwithstanding that there may not be a sufficient sum to the credit of the Assurance Fund. (g)

(a) In Victoria it has been held that notwithstanding the substitution of the words "sustaining loss" for the words "deprived of land" (see sec. 132 *ante*) the meaning is the same, and they apply solely to the deprivation of an interest previously possessed. Where an owner was registered under the Act and the Registrar omitted to endorse the title deeds as required by the Victorian Land Transfer Statute, (compare secs. 76 and 114 of the Manitoba Statute *ante*) the owner getting back the deeds was by this omission enabled fraudulently to conceal the fact that the land had been transferred to a purchaser under the statute and borrowed money on the security of the worthless deeds. The lenders sued the Registrar under the corresponding section (sec. 146) of the Victorian Statute, and it was held by the Chief Justice and Holroyd, J. (Higginbotham J. *dissentiente*) that as the lenders took no interest in the land under the worthless security, they had not been deprived of an interest, and had therefore sustained no loss within the meaning of the section. *Oakden v. Gibbs*, 8 V. L. R. (L.) 380. The effect of sections dealing with the liability of the assurance fund is discussed in this case.

(b) See sec. 67 *ante* as to ejectments.

(c) The word used in the Victorian Statute is "*inapplicable*." See secs. 132-134 *ante* as to these remedies. An action should not be brought against the Registrar where one will lie against any other person. *Fotheringham v. Archer*, 5 W. W. & A'B. (L.) 95.

(d) Compare sec. 132 and note (c) *in pede*.

(e) As to fiat of the Attorney-General see sec. 132 *ante*.

(f) See note (e) to sec. 132 *ante*.

(g) As to formation of the fund see secs. 140 and 141 *post*. As to recovery of money paid see sec. 138 *post*.

136. If in any such action judgment be given in favor of the nominal defendant, or the plaintiff discontinue or become non-suit, the plaintiff shall be liable to pay the full costs of defending such action, and the same when taxed shall be levied in the name of the nominal defendant by the like process or execution as in other actions *on the case*. When plaintiff to pay costs.

137. No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land as hereinbefore described (a) shall lie or be sustained against the District-Registrar, or against the Assurance Fund, or against the person by whose fraud, error, omission, misrepresentation, misdescription or wrongful act, the person entitled to the land or some estate or interest therein has been deprived thereof, unless such action be commenced within the period of six years from the date of such deprivation: Provided, nevertheless, that any person being under the disability of infancy, or unsoundness of mind at the time of such deprivation, may bring such action within six years from the date on which such disability shall have ceased; (b) and the plaintiff in any such action, at whatever time it may be brought, or the plaintiff in an action for the recovery of land, shall be non-suited in any case in which the deprivation complained of may have been occasioned through the bringing of such land under the new system, if it be made to appear to the satisfaction of the court before which such action shall be tried that such plaintiff or the person through or under whom he claims title had notice, by personal service or otherwise, (c) or was aware that application had been made to bring such land under the provisions of this Act, and had wilfully or collusively omitted to lodge a caveat forbidding the same or had allowed such caveat to lapse. (d) Limitation of such action.
Proviso in case of disability.
As to persons having notice.

(a) See note a to sec. 132 *ante* and compare wording of the first lines of that section and of section 134 *ante*; see also note a of the latter section.

(b) Compare 46 & 47 Vic. cap. 26.

(c) See secs. 52-55 and 57 *ante*.

(d) See sec. 130 and Rules Sch. R *ante*.

Recovery
of amount
paid by
Pro. Treas.

If party
liable out
of Pro-
vince.

Where
property
insufficient
to satisfy
claim.

138. Whenever any amount has been paid by the Provincial Treasurer as aforesaid, on account of any person who may be dead, such amount may be recovered from the estate of such person by action against his personal representatives in the name of the District-Registrar; and whenever any amount has been so paid on account of any person who may have absconded, or who cannot be found within the Province, and may have left any real or personal estate within the Province, it shall be lawful for the said court or a judge thereof, upon the application of the District-Registrar, and upon the production of a certificate signed by the Provincial Treasurer certifying that the amount has been paid in satisfaction of a judgment against the District-Registrar, as nominal defendant, to allow the District-Registrar to sign judgment against such person forthwith, for the amount so paid, together with the costs of the application; and such judgment shall be final and signed in like manner as a final judgment, by confession or default in any adverse suit and execution may issue immediately; and if such person shall not have left real or personal estate within the Province sufficient to satisfy the amount for which execution may have been issued as aforesaid, it shall be lawful for the District-Registrar to recover such amount, or the unrecovered balance thereof, by action against such person whenever and in such manner as may be possible.

See sec. 134 *ante*. See Appendix, Act of 1890, sec. 34.

Assurance
Fund not
liable in
certain
cases.

139. The Assurance Fund shall not, under any circumstances, be liable for compensation for any loss, damage or deprivation occasioned by the breach by a registered owner of any trust, whether express, implied or constructive; nor in any case in which the same land may have been included in two or more grants from the Crown; nor shall the Assurance Fund be liable in any case in which loss or deprivation has been occasioned by any land being included in the same certificate of title with other land through misdescription of the boundaries or parcels of any land, unless in the case last aforesaid it shall be proved that the person liable for compensation and damages is dead, or has absconded, or the sheriff shall certify that such person is unable to pay the full amount and costs awarded in any action for recovery of such compensation; and the said fund shall be liable for such amounts only as the sheriff shall fail to recover from the person liable as aforesaid.

See last paragraph note *e* to sec. 132 *ante*.

As to actions against the Assurance Fund the Queensland Royal Commission in 1879 reported as follows :—

“ 92. Our attention was directed to the difficulties which at present stand in the way of any person seeking recourse to the Assurance Fund. No claim has yet been established against that fund, nor, while the law remains unaltered, is it probable that any will be established, inasmuch as the right of redress is limited to cases in which a man is deprived of land, and all right of recourse is barred after the expiration of six years from the deprivation—a period which is likely to elapse before the error or fraud is discovered. We think that the right of recourse to this fund should be extended to all cases in which a man has sustained loss by reason of any entry made in the Register Book, by which he has been prejudiced, or by reliance on which he has been misled, and that the time for bringing a claim against it should be extended to that now allowed by law for bringing actions of ejectment.”

140. Upon the first bringing of land under the new system and also upon the registration of the title to an estate of freehold in possession of land under the new system, derived through the will or intestacy of a previous owner, or under any settlement or assignment in bankruptcy, there shall be paid one-tenth of one per cent. in case of an original grantee where no transaction or instrument affecting the lands has been registered except mortgages or leases; but in other cases one-quarter of one per cent. of the value thereof.

In the Land Titles Offices this section is construed as permitting the lower rate of commission to be charged after registrations appear upon the abstract only in cases where no more than one mortgage or one lease has been registered.

141. All sums of money so received as in last section mentioned shall be paid to the Provincial Treasurer, who shall from time to time invest such sums, together with all interest and profits which may have accrued thereon, in such securities as may from time to time be approved of

Commission payable on land.

Moneys to constitute fund.

by the Lieutenant-Governor-in-Council, to constitute an Assurance Fund for the purposes herein provided.

Refer to secs. 44 and 45 of the Act of 1890 in Appendix.

MISCELLANEOUS PROVISIONS.

Informality not to invalidate.

112. No petition, order, affidavit, certificate, registration or other proceeding under this Act shall be invalid by reason of any informality or technical irregularity therein or of any mistake not affecting the substantial justice of the proceeding.

This results from the policy of the Act. Compare the preamble to R. P. Act of 1885, referred to at page 1 *ante*.

Purchaser, etc., not affected by omission of notice.

113. A purchaser or encumbrancee for valuable consideration shall not be affected by the omission to send any notice by this Act directed to be given or by the non-receipt thereof.

Compare secs. 52, 57, 98, 103, 106, 107, 108, 130, (4) (9) (12) (15) and (16) 131, and 135.

Implied covenants may be modified.

114. Every covenant and power declared to be implied in any instrument by virtue of this Act may be negated or modified by express declaration in the instrument or endorsed thereon, and in any action for a supposed breach of any such covenant, the covenant alleged to be broken may be set forth and it shall be lawful to allege that the party against whom such action is brought did so covenant, precisely in the same manner as if such covenant had been expressed in words in such memorandum of transfer or other instrument, any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect and be enforced in the same manner as if it had been set out at length in such instrument; and where any memorandum of transfer or other instrument in accordance with the provisions of this Act is executed by more parties than one, such covenants as are by this Act to be implied in instruments of a like nature shall be construed to be several and not to bind the parties jointly.

Action on such covenants.

Compare secs. 80, 88, 89, 91, 99, 103, 104 and 107 *ante*, and C. S. M. cap. 1, sec. 7 (28).

Covenants and powers of an entirely different character from those implied under the provisions of the Act may be introduced. Reviewing a similar provision of the South Australian Act, Stow, J., observed that the object of the section was to allow people to make their own tenancy contracts so far as covenants are concerned. The implied covenants and powers mentioned in the Act enable short

forms of deeds to be made, but the power of individuals to make their bargains remains, *Bucknall v. Reid*, 10 S. A. L. R. 188, 189.

The provisions of this section taken with those of sub-sec. 26 of sec. 3 and sec. 77 *ante* (*q. v.* with notes), permit of almost unlimited variety in the character and covenants of instruments which may be registered under the new system. The clauses declaring implied covenants, in addition to such as follow from the interpretation of terms (sec. 3 *ante*), are sections 28, 77, 80, 88, 89, 91, 99, 103, 104 and 117, and as the covenants so to be implied derive their potency from the statute, in all matters respecting dealings with lands under the provisions of the Act, they would probably have to be regarded as specialty contracts, and invariably construed as binding the parties severally, not jointly. None of the instruments are "deeds," however, and with regard to limitations would be affected as if simple contracts only (*a*). If the implied covenants are negatived or modified seals are absolutely necessary to give them proper effect. There is a distinction made in sec. 28 between "deeds" and other instruments, and sec. 97 declares in effect that the term "mortgage" used in the Act is applied to instruments not necessarily *deeds*. These questions are more fully discussed and cases cited under secs. 4, 6 and 59 of the Territorial Real Property Act in Part III. of this manual. One effect of these provisions is to extend greatly the interpretation of the words "substantially in conformity with the schedules" in the 77th section, and probably the concluding words of sub-sec. 26 (page 46 *ante*) may be construed as requiring seals when rendered necessary by variations from the forms given in the Act.

In re Irish, 2 Man. L. R. 361, statutory conveyances were declared to be substantially in conformity with the provisions of the R. P. Act of 1885.

(a) 46 and 47 Vic., cap. 26.

Where the defendant, owner of land subject to the new system, executed a lease of it upon a short form purporting to be made in respect of "*The Act respecting Short Forms of Leases*," (b) which was not registered or filed in the Land Titles Office; and afterwards conveyed the land to X by a conveyance in which he made no mention of the lease; it was held by the full Court in an action by the lessee upon the covenant for quiet enjoyment, after ouster by X, that the covenant in the lease could be sued upon: *Shore v. Green*, 6 Man. L. R. 322, and *per Killam, J.* 1. The instrument was substantially in conformity with the form given in the R. P. Act, and could have been registered. 2. Not having been registered it could not take effect as a lease (c). 3. Even without registration the covenant could be sued upon. 4. The neglect of the lessee to register his lease was not, but the transfer by the lessor without mention of the lease was the proximate cause of the damage to the plaintiff. *Bain, J.*, doubted whether the lease was one which could have been registered under the Real Property Act.

Owner bound to allow use of name in suits, etc.

Indemnity in such cases.

How purchaser for value may be ascertained.

145. The owner of any land or of any lease, mortgage or charge shall, on the application of any beneficiary or person interested therein, be bound to allow his name to be used by such beneficiary or person in any action, suit or proceeding which it may be necessary or proper to bring or institute in the name of such owner concerning such land, lease, mortgage or charge, or for the protection or benefit of the title vested in such owner, or of the interest of any such beneficiary person; but nevertheless such owner shall in any case be entitled to be indemnified in like manner as if, being a trustee, he would, before the passing of this Act, have been entitled to be indemnified in a similar case of his name being used in any such action, suit or proceeding by his *cestui que trust*.

146. Whenever in any action, suit, or other proceeding affecting the title to land, or any estate or interest therein, subject to the new system, it becomes necessary to determine the fact whether the transferee, mortgagee, encumbrancee or lessee is a purchaser or transferee for valuable consideration or not, any person who is a party to such action, suit, or

(b) Probably on an Ontario form; the Manitoba Short Forms Act is cited as "*An Act respecting Short Forms of Indentures*."

(c) Compare sec. 74 *ante*.

other proceeding may give in evidence any transfer, mortgage, encumbrance, lease or other instrument affecting the title to such land, estate or interest in dispute, although the same may not be referred to in the certificate of title or may have been cancelled by the District-Registrar.

147. Every certificate of title issued under this Act, and every exemption, duplication or certified copy of any instrument deposited, filed, kept or registered in any Land Titles Office, together with all memoranda and endorsements thereon, shall be received as evidence in any court of law or equity in this Province in the same manner and with the same effect as if the original within his office was produced without proof of the signature or seal of office of such District-Registrar.

See Rule 20 Sch. S, s. 26, and secs. 66, 132 and 135 *ante*. *Vide* note p. 45 *ante*.

148. In case any person who, if not under disability might have made any application, given any consent, or done any act, or been party to any proceeding under this Act, is a minor, an idiot, or a lunatic, the guardian of the minor, or committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act and be party to such proceedings as such person might, if free from disability, have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act. If the minor has no guardian, or the idiot or lunatic no committee of his estate, or persons yet unborn are interested, the official guardian *ad litem*, or such other person as may be appointed for that purpose by the District-Registrar, may act with like power for such minor, idiot, lunatic or person yet unborn, and any notices or proceedings which may be required by the District-Registrar to be served on a person under any such disability may be served on the guardian *ad litem*, or other person so appointed by the District-Registrar for such person under disability, and such service shall be considered as good service and as effectual and binding upon such person under disability as if personally served upon him while under no disability.

This clause was introduced by section 29 of the amending Act of 1887.

The proper course is to apply by petition supported by affidavits as to the circumstances and the propriety of appointing the guardian, etc., as in a proceeding in equity.

The effect of service upon guardians, etc., appointed under this section would be to work a *statutory* estoppel only. See secs. 52, 53, 57 and 137 *ante*.

The following form can be varied to suit the special circumstances of each case :

THE REAL PROPERTY ACT OF 1889.

Application No.

In the Matter of the Application of

(Applicants' names and additions.)

to bring under the operation of the above Act. (Describe lands.)

Upon the application of _____ and upon reading the affidavit of _____, I do hereby in pursuance of section 148 of "The Real Property Act of 1889" appoint _____ of the _____ of _____ in the Province of _____ guardian of _____ infant child _____ of _____ and _____ deceased, upon whom all papers requiring service upon said infants under the said Real Property Act of 1889 in this matter may be served, and generally to act on behalf of said infants in this matter, as provided by said section 148 until further order of the District-Registrar or of the Court.

Dated at Land Titles Office, this _____ day of _____ A. D. 18 _____

[SEAL]

District-Registrar.

PENALTIES.

Penalties.

119. If any person wilfully makes any false statement or declaration in any dealing in land under this Act, or suppresses or conceals, or assists or joins in, or is privy to the suppressing, withholding or concealing from the District-Registrar any material document, fact or matter of information, or wilfully makes any false declaration required under the authority or made in pursuance of this Act, or if any person fraudulently procures or is privy to the fraudulent procurement of any certificate of title or instrument, or of any entry in the Register, or of any erasure or alteration in any entry in the Register, or if upon requisition made by the District-Registrar any person refuses or wilfully neglects to produce any instrument or allow the same to be inspected, or refuses or wilfully neglects to give any information or explanation which he is by this Act required to give, or knowingly misleads or deceives any person hereinbefore authorized to require explanation or information in respect to any land, or the title to any land or in respect to which any dealing or transmission is proposed to be registered, or is a party to or privy to any fraudulent act whatever in any matter connected with the working of this Act; such person shall for each such offence be liable to a penalty of not less than fifty dollars nor more than five hundred dollars, and in default of payment imprisonment for not less than one month nor more than six months.

Fine and imprisonment.

See secs. 68, 121 and 122 *ante*, and compare sec. 153 Victorian Land Transfer Statute, which is more comprehensive in its provisions.

See secs. 64, 85, 117, 123 and 129 *ante*.

There must be a fraudulent intention and *semble* there should first be a conviction for the criminal offence before any civil proceeding is determined: *Wiggins v. Hammill*, 4 V. L. R. (L.) 63.

In Canada the Criminal Law and procedure in criminal matters are subject to the exclusive legislative authority of the Dominion Parliament. See B. N. A. Act sec. 91.

Where a plaintiff had applied for registration of title, alleging that the land and adjacent ground were unoccupied, it was held that, without a guilty intention, this did not make the certificate void; and *semble*, there should be first a conviction for a criminal offence, the charge should not be determined in a civil proceeding: *Wiggins v. Hammill*, 4 V. L. R. (L.) 63. It must be noted that sec. 153 of the Victorian *Land Transfer Statute* provides that certain fraudulent acts and false declarations in proceedings thereunder shall be deemed misdemeanors. In Canada the criminal laws are exclusively within the jurisdiction of Parliament, and Provincial Legislatures can only impose punishment for the purpose of enforcing their laws enacted respecting limited classes of subjects: *vide* "The British North American Act, 1867" (Imperial, 30 and 31 Vic., cap. 3, secs. 91 and 92).

Compare provision as to penalty in sec. 122 *ante*.

150. All prosecutions for penalties under this Act may be brought before a Police Magistrate or any two Justices of the Peace, and all penalties when collected shall be paid over to the Provincial Treasurer. Prosecutions for penalties.

Procedure would be regulated by the Summary Convictions Act, R. S. C. cap. 178.

48 Vic., cap. 8, sec. 4, amended. **151.** Section four of forty-eight Victoria, chapter eight, is hereby amended by adding at the end thereof the following words "Land Titles Offices."

This section has the effect of adding Land Titles Offices to departments included in the Civil Service of Manitoba and subject to the provisions of "The Manitoba Civil Service Act." At present the Land Titles Offices are administered under the supervision of the Attorney-General.

Repealed statutes.

Saving clause.

152. Except as herein before provided Forty-eight Victoria, chapter twenty-eight, forty-nine Victoria, chapter twenty-eight, fifty Victoria, chapter eleven, fifty-one Victoria, chapters twenty-one and twenty-two, fifty-two Victoria, chapter four, and any other Act which may be passed this present session amending any of said Acts, are hereby repealed, but the Acts repealed by any of said Acts shall remain repealed, and all things lawfully done and all rights acquired or liabilities incurred under them or any of them shall remain valid and may be enforced.

See secs. 2, 14, 16, 18, 35, and 36 and notes *ante*.

THE END OF PART II.

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PART III.

THE TERRITORIES REAL PROPERTY ACT.

NOTE.—*The side notes are not printed as they appear in the authorized edition of the Statutes.*



THE TERRITORIES REAL PROPERTY ACT

AS AMENDED WITH REFERENCES AND NOTES;
BEING REVISED STATUTES OF CANADA.

CHAPTER 51.

An Act respecting Real Property in the Territories.

HER Majesty, by and with the advice and consent of the Senate and A.D. 1886.
House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as "*The Territories Real Property Act*," 49 V., Short title.
c. 26, s. 1.

COMMENCEMENT.

2. This Act shall commence and take effect from and after the first Com-
day of January, one thousand eight hundred and eighty-seven. 49 V., c. 26, s. 2. commence-
ment of
Act.

INTERPRETATION.

3. In this Act, and in all instruments purporting to be made or Interpretation.
executed thereunder, unless the context otherwise requires,—

(a) The expression "land" means lands, messuages, tenements and "Land."
hereditaments, corporeal and incorporeal, of every nature and descrip-
tion, whatever the estate or interest therein is, and whether such estate
or interest is legal or equitable, together with all paths, passages, ways,
water courses, liberties, privileges, easements, mines, minerals and
quarries appertaining thereto, and all trees and timber thereon and there-
under lying or being, unless any such are specially excepted.

This paragraph was substituted by 51 Vic. cap. 20,
sec. 2, for the former clause which read as follows:

(a) The expression "Land" means land, messuages, tenements and
hereditaments, corporeal and incorporeal, of every kind and description,
whatever the estate or interest therein is, together with all paths,
passages, ways, water-courses, liberties, privileges, easements, mines,

minerals and quarries appertaining thereto, and all trees and timber thereon and thereunder lying or being, unless any such are specially excepted ;

See Stats. Man. 48 Vic. cap. 28, sec. 3 (1) ; 51 Vic. cap. 22, sec. 1, and 52 Vic. cap. 16, sec. 3 (1).

Compare with sec. 4 of the Victorian Transfer of Land Statute.

"Owner." (b) The expression "Owner" means any person or body corporate entitled to any freehold or other estate or interest in land, at law or in equity, in possession, in futurity or expectancy ;

"Transfer." (c) The expression "Transfer" means the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise ;

"Mortgage." (d) The expression "Mortgage" means any charge on land created merely for securing a debt ;

The Man. Stat. (page 43 *ante*) has the words "or loan," and now, as amended, includes sub-mortgages.

"Mortgagee." (e) The expression "Mortgagee" means the owner of a mortgage ;

"Mortgagor." (f) The expression "Mortgagor" means the owner or transferee of land, or of any estate or interest in land pledged as security for a debt ;

"Encumbrance." (g) The expression "Encumbrance" means any charge on land created for any purpose whatever, inclusive of mortgage, unless expressly distinguished ;

The last three clauses differ slightly with those of the Man. Stat. p. 44 *ante*.

"Encumbrancer." (h) The expression "Encumbrancer" means the owner of any land or of any estate or interest in land subject to any encumbrance ;

"Encumbrancee." (i) The expression "Encumbrancee" means the owner of an encumbrance ;

"Lunatic." (j) The expression "Lunatic" means any person found by any competent tribunal or commission *de lunatico inquirendo*, to be a lunatic ;

"Person of unsound mind." (k) The expression "Person of unsound mind" means any person not an infant, who not having been found to be a lunatic, has been found on like inquiry to be incapable, from infirmity of mind, of managing his own affairs ;

"Instrument." (l) The expression "Instrument" means any grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate or exemplification

of will, or any other document in writing relating to the transfer or other dealing with land or evidencing title thereto.

(m) The expression "Register" means the register of titles to land to be "Register." kept in accordance with this Act;

(n) The expression "Registrar" means any person appointed under "Registrar." this Act as registrar of titles;

(o) The expression "Territories" means the North West Territories, "Territories." the District of Keewatin and all other Territories of Canada;

The last three clauses not in Man. Stat.

(p) The expression "Court" means any court authorized to adjudicate "Court." in the Territories in civil matters in which the title to real estate is in question;

(q) The expression "Court of Appeal" means the Court of Appeal "Court of Appeal." herein constituted;

(r) The expression "Judge" means any official authorized in the "Judge." Territories to adjudicate in civil matters in which the title to real estate is in question;

(s) The expression "Transmission" applies to change of ownership "Transmission." consequent upon lunacy, levy under execution, order of court or other act of law, or in virtue of any settlement or any legal succession in case of intestacy;

(t) The expression "Grant" means any grant of Crown land, whether "Grant." in fee or for years, and whether direct from Her Majesty or pursuant to the provisions of any statute;

(u) The expression "Indorsed" means anything written upon any "Indorsed." instrument or other document, or in the margin thereof, or at the foot thereof;

(v) The expression "Possession," when applied to persons claiming "Possession." title to land, means also alternatively the reception of the rents and profits thereof. 49 V., c. 26, s. 3, as amended by 51 V., c. 20, s. 2.

Compare with interpretation clauses of the Manitoba Statute, pages 42-47 *ante*.

The general interpretation clauses R. S. C. cap. 1, sec. 7, are applicable to this statute in cases not specially provided for.

PRELIMINARY.

4. From and after the commencement of this Act, all lands in the Territories shall be subject to the provisions hereof. 49 V., c. 26, s. 4. All lands subject to Act.

Compare sec. 4 of the amending Act of 1888, which will be found following sec. 17 *post*.

As to the meaning and effect of "*Subject to the provisions*" compare secs. 44, 45, 47 and 64, and see notes by Messrs. McCaul and Bown, 9 Can. L. T. 26, referred to after Mr. Justice McGuire's judgment, sec. 59 *post*.

DESCENT CONVEYANCE, ETC., OF REAL PROPERTY.

Descent of land. **5.** Land in the Territories shall go to the personal representatives of the deceased owner thereof in the same manner as personal estate now goes.

Compare secs. 27 and 33 of the Manitoba Statute, pages 70 and 75 *ante*; also Manitoba Statutes 48 Vic. cap. 28, sec. 21; 49 Vic. cap. 28, sec. 4; 51 Vic. cap. 21, sec. 1, and cap. 22, sub-secs. 2 and 3, also 52 Vic. cap. 4.

This section was substituted by 51 Vic. cap. 20, sec. 3, for the former section, which was as follows:

All lands go to executor, etc. "**5.** All lands in the Territories which, by common law, are regarded as real estate, shall be held to be chattels real, and shall go to the executor or administrator of any person or persons dying seized or possessed thereof, as personal estate now passes to the personal representatives." 49 V., c. 26, s. 5.

The section in this form remained in force until 22nd May, 1888. Refer to *Fleming v. Howard*, p. 71 *ante*.

Effect of words of limitation. **6.** Hereafter no words of limitation shall be necessary in any conveyance of any land in order to convey all or any title therein, but every deed or instrument conveying land shall operate as an absolute conveyance of all such right and title as the grantor has therein at the time of its execution, unless a contrary intention is expressed in such conveyance; but nothing herein contained shall preclude any conveyance from operating by way of estoppel; and hereafter the introduction of any words of limitation into any conveyance or devise of any land, shall have the like force and meaning, as the same words of limitation would have if used by way of limitation of any personal estate, and no other. 49 V., c. 26, s. 6.

Compare sec. 28 of the Manitoba Statute page 72 *ante*, and section 121 of this Act *post*.

Observe the use of limiting words in sec. 74 *post*. The reference to conveyances in this section would necessarily

include "Transfers" of property registered under the new system. This section is cited by Mr. Justice McGuire in *re Thompson*, 10 Can. L. T. 48 (see notes to sec. 59 *post*) as defining what shall be conveyed by a "deed."

7. No devise shall be valid or effectual as against the personal representative of the testator, until the land affected thereby is conveyed to the devisee thereof, by the personal representative of the deviser, saving and excepting such devises as are made by the testator to his personal representative, either in his representative capacity or for his own use. 49 V., c. 26, s. 7.

Devisee to take from personal representative.

See Man. Stat. sec. 29.

8. No widow whose husband dies on or after the first day of January, one thousand eight hundred and eighty-seven, shall be entitled to dower in the real property of her deceased husband: but she shall have the same right in such real property as if it were personal property. 49 V., c. 26, s. 8.

Dower abolished. Widow's right.

See Man. Stat. sec. 30.

9. No husband whose wife dies on or after the first day of January, one thousand eight hundred and eighty-seven, shall be entitled to any estate by the curtesy in the real property of his deceased wife; but he shall have the same right therein as a wife has in the personal property of her deceased husband. 49 V., c. 26, s. 9.

Curtesy abolished. Husband's right.

See Man. Stat. cap. 31.

10. Whenever land is conveyed to a man and his wife the grantees shall take according to the tenor of the deed, and they shall not take by entireties unless it is so expressed in the conveyance or transfer. 49 V., c. 26, s. 10.

Land conveyed to man and wife.

11. A man may make a valid conveyance or transfer of his real estate to his wife, and a woman may make a valid conveyance or transfer of her real estate to her husband, without in either case, the intervention of a trustee. 49 V., c. 26, s. 11.

Conveyances by husband to wife or vice versa.

Man. Stat., sec. 32.

12. Any grant, devise or limitation, which heretofore would have created an estate tail, shall be construed to carry an estate in fee simple, or the greatest estate the grantor or deviser had in the land granted or conveyed; and no estate in fee simple shall be changed into any limited

Estate tail abolished.

Feesimple
not change-
able into
limited
estate.

fee or fee-tail, but the land, whatever form of words is used in any instrument of transfer or transmission or dealing, shall, except as hereinafter otherwise provided, be and remain an absolute estate in the owner for the time being. 49 V., c. 26., s. 12.

This provision does not appear in the present Manitoba Statute, but see repealed act of 1885, secs. 27 and 138.

Married
woman's
lands.

13. A married woman shall, in respect of land acquired by her after the coming into force of this Act, have all the rights and be subject to all the liabilities of *feme sole*, and may alienate and, by will or otherwise, deal with land as if she were unmarried. 49 V., c. 26, s. 13.

Forfeiture
by wife for
adultery.

14. If a wife has left her husband, and has lived in adultery after leaving him, she shall take no part of the estate of her husband. 49 V. c. 26, s. 14.

And by
husband.

15. If a husband has left his wife, and has lived in adultery after leaving her, he shall take no part of her estate. 49 V., c. 26, s. 14.

Children
inherit
from
mother.

16. Illegitimate children shall inherit from the mother as if they were legitimate, and through the mother if dead, any property or estate which she would, if living, have taken by purchase, gift, devise, or descent from any other person. 49 V., c. 26, s. 16.

And
mother
from child.

17. When an illegitimate child dies intestate, without issue, the mother of such child shall inherit. 49 V., c. 26, s. 17.

With reference to the foregoing sections 5 to 17 the following provision has been made by 51 Vic. cap. 20, sec. 4.

Applica-
tion of sec-
tions 5 to 17.

"It is hereby declared that sections five to seventeen of the said Act, both inclusive, were intended to extend and the provisions of the said sections shall be held to have extended from the date upon which the said Act came into force to all land in the Territories and to every estate and interest therein."

Compare sec. 4 *ante*, and sec. 33 of the Manitoba Statute page 75 *ante*.

Mr. Justice McGuire in *re Thompson*, 10 Can. L. T. 47, says "Sections 5 to 17, both inclusive, form a part of the Act distinct from the rest and took effect from the 1st January, 1887." See notes to sec. 59 post.

REGISTRATION DISTRICTS.

Registra-
tion dis-
tricts.

18. The provisional districts of Assiniboia and Alberta, as defined by an order of the Queen's Privy Council for Canada, dated the eighth day of May, one thousand eight hundred and eighty-two, shall, for the pur-

poses of this Act, be land registration districts, to be known respectively as the Assiniboia Land Registration District and the Alberta Land Registration District; and that portion of the provisional district of Saskatchewan lying eastward of the third principal meridian shall be a land registration district, to be known as the "East Saskatchewan Land Registration District;" and that portion of the said Saskatchewan provisional district lying westward of the said meridian shall also be a registration district, to be known as the "West Saskatchewan Land Registration District." 49 V., c. 26, s. 18.

With reference to these districts amendments to settle boundaries with greater precision were made by the Act 50-51 Vic., cap. 30, which came into force on 23rd June, 1887, and are as follows:—

"Whereas by the Act forty-ninth Victoria, chapter twenty-six, intituled '*An Act respecting Real Property in the Territories*,' the Provisional District of Alberta was constituted one land registration district, and the Provisional District of Saskatchewan was divided into two registration districts, the dividing line between the said districts being the third principal meridian in the system of Dominion land surveys; whereas it was found necessary in the public interest and for the public convenience to divide the said Provisional District of Alberta into two separate registration districts, and to alter the boundary line between the two registration districts into which the said Provisional District of Saskatchewan was by the said Act divided; and whereas it is expedient that the division and alteration so made and all registrations of deeds and instruments effected in consequence should be ratified and confirmed, and that certain other amendments should be made to the said Act: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, declares and enacts as follows:—

"1. Notwithstanding anything contained in section eighteen of '*The Territories Real Property Act*' the Provisional District of Alberta shall be and shall be deemed to have been from the first day of January, in the present year one thousand eight hundred and eighty-seven, divided into two separate land registration districts, designated and bounded as follows:—

"(a) The South Alberta Land Registration District shall consist of so much of the said Provisional District of Alberta as lies to the south of the ninth correction line in the system of Dominion land surveys;

"(b) The North Alberta Land Registration District shall consist of so much of the said Provisional District of Alberta as lies to the north of the said ninth correction line."

"2. Notwithstanding anything in the said section contained the Provisional District of Saskatchewan shall be and be deemed to have been

Boundaries of districts altered.

Alberta divided.

South Alberta.

North Alberta.

Saskatchewan divided.

"from the ninth day of May in the present year one thousand eight hundred and eighty-seven, divided into two separate land registration districts, designated and bounded as follows :—

East Sas- " (a) The East Saskatchewan land registration district shall consist of
katchewan. " so much of the said Provisional District of Saskatchewan as lies to the
" east of the dividing line between the tenth and eleventh ranges of town-
" ships west of the third principal meridian in the system of Dominion
" land surveys ;

West Sas- " (b) The West Saskatchewan Land Registration district shall consist of
katchewan. " so much of the said Provisional District of Saskatchewan as lies to the
" west of the said dividing line between the tenth and eleventh ranges of
" townships west of the third principal meridian aforesaid."

* * * * *

Ratifica- " 4. All registrations effected and all acts done previous to the passing
tion of re- " of this Act in anticipation of the ratification and confirmation by Parlia-
gistrations, " ment of the division of the said Provisional District of Alberta into two
transfers, " registration districts, and of the alteration of the boundaries of the two
etc. " registration districts into which the Provisional District of Saskatene-
" wan was so divided, are hereby ratified and confirmed, and the transfer
" by the registrar of the West Saskatchewan registration district to the
" registrar of the East Saskatchewan registration district of any deeds,
" instruments or documents registered previous to the said ninth day of
" May and relating to lands by this Act detached from the former and
" attached to the latter registration district is also hereby ratified and con-
" firmed, and the said Registrar of West Saskatchewan is authorized and
" empowered to make any further transfer to the registrar of East Saskat-
Further " chewan of any such deeds, instruments or documents as such alteration
transfer " in the boundaries of the two districts renders necessary."

Registra- " 5. No registration of titles effected under the provisions of either of
tions not " the Acts hereinbefore cited shall be deemed to be invalid or defective in
invalid- " consequence of such registration having been made by a registrar
dated. " previously to his having taken the oath of office or entered into the bond
" required by the said Acts, nor in consequence of any person having acted
" as deputy registrar without having been formally appointed and without
" having taken the prescribed oath and entered into a bond as required by
" the said Acts."

New regis- " 19. The Governor in Council may, from time to time, by proclama-
tration dis- " tion, as the settlement of the country and the exigencies of the public
tricts. " service require, constitute any other portion of the Territories a land
" registration district, and declare by what local name the same shall be
" known and designated. 49 V., c. 26, s. 19.

Man. Stat., sec. 4.

20. As soon after the passing of this Act as practicable, and whenever, ^{Offices, etc., to be provided.} at any subsequent period, a new registration district is established, the Governor in Council may provide in each registration district, at the public expense, and thereafter maintain in a proper state of repair, a building of stone or brick, to serve as the office of the Registrar, and as the place of deposit and preservation of the registers, duplicates, instruments and documents connected with the registration of titles, and shall fit up the said office with such fire-proof safes and other secure places as are necessary. 49 V., c. 26, s. 20.

Man. Stat., s. 18.

21. In each such registration district, at such place as the Governor ^{Land titles, offices, appoint-ment of registrars, assistants and clerks.} in Council determines, there shall be an office, to be called the "Land Titles Office"; and the business of such office shall be conducted by an officer to be called the registrar, appointed by the Governor in Council, with such assistants and clerks as are necessary, and as the Governor in Council, from time to time, appoints. 49 V., c. 26, s. 21.

Man. Stat., secs. 5 and 6.

22. The Governor in Council may, from time to time, appoint a Deputy ^{registrars: powers and duties.} deputy to any of the registrars aforesaid, to act in case of the death, illness or absence from his office of the registrar to whom he is deputy; and every deputy, during the time he so acts, shall have all the powers and privileges, and perform all the duties and be subject to all the responsibilities of the officer to whom he is deputy. 49 V., c. 26, s. 22.

Man. Stat., sec. 7.

The appointment of an Inspector has been provided for by 51 Vic. cap 20, section 5, follows:—

"5. The Governor in Council may, from time to time, appoint an ^{Inspector. Duties and qualification.} Inspector of Land Titles Offices, whose duty shall be, under instructions from the Minister of the Interior, to inspect the books and records of the several Land Titles Offices, and to perform such other duties as are directed by the Minister of the Interior to be done from time to time, and the said Inspector may, in the discretion of such Minister, be directed to perform any duty which any Registrar is empowered by the said Act to perform; but no person shall be appointed Inspector of Land Titles Offices unless he is a barrister or advocate of at least three years standing in one of the Provinces or Territories of Canada."

Man. Stat., secs. 6 and 77.

23. Every registrar of deeds appointed and acting in the Territories ^{Existing} when this Act comes into force, shall upon taking the oath and giving the ^{registrars.}

Qualifica-
tion of
future ap-
pointees.

security hereinafter mentioned, be *ex officio* a registrar under this Act, and shall hold office during pleasure; but thereafter no person shall be appointed a registrar unless he is a barrister or advocate, of at least three years' standing in one of the Provinces of Canada. 49 V., c. 26, s. 23.

Man. Stat., secs. 5 and 7.

See secs. 25 and 26 *post*, as to oath and security.

Salaries.

24. The salaries of the Inspector of Land Titles Offices, and of registrars, deputy registrars, and other necessary officers, and such incidental expenses of carrying this Act into effect as are sanctioned by the Governor in Council, shall be paid out of moneys provided by Parliament for that purpose.

49 Vic. cap. 26, sec. 24, as amended by 51 Vic. cap. 20, sec. 6.

Oath of
office.

25. Every Inspector of Land Titles Offices, registrar and deputy registrar, before he enters upon the execution of his office, shall take, before some judge or stipendiary magistrate in the Territories, the oath of office in the form A in the schedule to this Act.

49 Vic. cap. 26, sec. 25, as amended by 51 Vic. cap. 20, sec. 7.

See sec. 23 *ante*, and 26 *post*. See Man. Stat., sec. 8.

FORM A.

FORM OF REGISTRAR'S OR DEPUTY REGISTRAR'S OATH OF OFFICE.

Form.

Territories of Canada,) I (*name and describe deponent*), having been
District of) appointed to the office of registrar (*or deputy*
To Wit:) registrar) in and for the (*name of registration*
district, &c.), do swear (*or as the case may be*) that I will well, truly and
faithfully perform and execute all duties required of me, relating to the
said office, so long as I continue therein, and that I have not given,
directly or indirectly, nor authorized any person to give, any money,
gratuity or reward whatsoever for procuring the said office for me.

Sworn before me at , the)
day of , A. D. 18 .)

J. P., in and for the said
District)

(*Signature of Registrar or
Deputy Registrar.*)

49 V. cap. 26, sch. form A.

26. Before any registrar or deputy registrar appointed under this Act is sworn into office, he, and two or more sufficient sureties, shall enter into a joint and several bond in duplicate under their hands and seals to Her Majesty, in a penal sum to be fixed at not less than one thousand dollars, for the true and faithful performance by the said registrar or deputy registrar, of his duty in respect of all things directed to be done by or required of him by this Act or any law in that behalf, and such bond shall be in the form B in the schedule to this Act, or to the like effect :

Security bond.

Condition and form.

2. The obligation to the like effect of any Guarantee Company approved of by the Governor in Council may be substituted for such bond :

Guarantee Co. bond.

3. Such bond or guarantee shall be subject to the approval of the Governor in Council. 49 V., c. 26, s. 26.

For Form see sec. 27 *post*. See Man. Stat., sec. 8.

27. The sureties in such bond and duplicate shall justify under oath in the form C in the schedule to this Act, and the execution by the registrar, or deputy registrar, and his sureties shall be verified by affidavit of a subscribing witness in the form D in the schedule to this Act, taken before a justice of the peace ; and one of such duplicates, with the affidavit appended, shall be forthwith transmitted to the Secretary of State to be filed in his office and the other shall be filed in the office of the Lieutenant-Governor of the Territories. 49 V., c. 26, s. 27.

Custody of bonds.

FORM B.

FORM OF BOND OF REGISTRAR OR DEPUTY REGISTRAR.

Territories of Canada, } Know all men by these presents that I, Form.
District of } (insert name and addition of principal), of the
To Wit : } of , in
the Territories of the Dominion of Canada, hereinafter called "the principal" and we (insert names and additions of the sureties) of the
of , in the
of and , of
the of , in the
hereinafter called "the sureties," are respectively held and firmly bound unto our Sovereign Lady the Queen, her heirs and successors, in the respective penal sums following, that is to say : "The principal" in the sum of dollars of lawful money of Canada, and each of "the sureties" in a sum of dollars, of like lawful money, to be paid to our said Sovereign Lady the Queen, her heirs and successors ; for which said respective payments, well and faithfully to be made, we jointly and severally, each for the other,—bind ourselves and our respec-

under this Act,
person shall be
ate, of at least
la. 49 V., c. 26,

urity.

Offices, and of
ficers, and such
re sanctioned by
provided by Parlia-

Vic. cap. 20,

trar and deputy
office, shall take,
territories, the oath

1 Vic. cap. 20,

Stat., sec. 8.

OF OFFICE.

ent), having been
registrar (or deputy
me of registration
ll well, truly and
e, relating to the
have not given,
give, any money,
ice for me.

of Registrar or
Registrar.)

tive heirs, executors and administrators, firmly by these presents, sealed with our respective seals,

Dated this day of in the year of Our
Lord one thousand eight hundred and , and in the
year of Her Majesty's reign.

Whereas "the principal" having been appointed to the office or employment of is required by law to give security to the Crown for the due performance of the duties appertaining thereto; and "the sureties" have consented to become his sureties for such his performance of the said duties; and this bond is given in pursuance of "*The Territories Real Property Act.*"

Now the condition of this obligation is, that if "the principal" faithfully discharges the duties of the said office and duly accounts for all moneys and property which may come into his custody by virtue of the said office, this obligation shall be void, otherwise the same shall remain in full force and effect.

Signed, sealed and delivered in }
the presence of (Signatures and Seals.)

49 V. cap. 26, sch. form B.

FORM C.

AFFIDAVIT OF JUSTIFICATION BY A SURETY.

Territories of Canada, } I, one of the sureties
District of in the foregoing bond named, make oath (or
To Wit: affirm, as the case may be) and say as follows:

1. I am seized and possessed to my own use of real (or real and personal) estate, in the of in Canada, of the actual value of dollars, over and above all charges upon or encumbrances affecting the same.

2. My post office address is as follows: (*insert it.*)

Sworn before me at the of
in the of
this day of
 , A.D. one thousand eight (Signature.)
eight hundred and ninety .

J. P. for the said

49 V. cap. 26, sch. form C.

FORM D.

AFFIDAVIT OF ATTESTATION.

Territories of Canada, } I,
 District of } of the of , in
 To Wit: } the of
 on the of make oath and say, that I was
 personally present, and did see (one of or as the case may
 be) the obligors in the above bond or writing obligatory named, duly
 execute the said instrument by signing, sealing, and, as (his act and deed
 or their respective acts and deeds, as the case may be), delivering the same;
 and that I am a subscribing witness to such execution.
 Sworn before me, at the of of
 , in the of ,
 this day of (Signature.)
 A.D. 18 .
 J. P. for the said

A separate affidavit in this form will be made by a witness to the execution
 by each obligator, if the same person does not witness the execution by all of
 them.

49 V. cap. 26, sch. form D.

28. The registrar or deputy registrar shall, when required by the New bond
 Secretary of State, execute a new bond in the form and to the effect pro- when re-
 vided in section twenty-six of this Act, or furnish such other security as quired.
 is deemed expedient. 49 V., c. 26, s. 28.

29. Each registrar shall have a seal of office, approved by the Governor Seal of
 in Council, with which he shall seal all certificates of title and stamp all office.
 instruments which are presented to him for registration. 40 V., c. 26,
 s. 29.

Man. Stat., sec. 9.

30. Each registrar shall, when required, and upon the payment of Copies of
 the legal fees, furnish, attested by the seal of his office, exemplifications, uncan-
 copies and abstracts of any uncanceled instrument affecting land, which celled in-
 is deposited, filed, kept or registered in his office, and every such struments
 exemplification or certified copy shall be received as evidence in the to be evi-
 same manner and with the same effect as if the original was produced. dence.
 49 V., c. 26, s. 30.

Man. Stat. sec. 147.

MAN.L.A.

Registrars,
etc., not to
act as
agents, etc.

31. No registrar, deputy registrar or clerk in any land titles office under this Act shall, directly or indirectly, act as the agent of any person investing money and taking securities on real estate within his registration district, nor shall such registrar, deputy registrar or clerk advise, for any fee or reward or otherwise, upon titles of land, nor practice as a conveyancer, nor shall he carry on or transact, within the registry office, any business or occupation whatever, other than his duties as such registrar, deputy or clerk. 49 V., c. 26, s. 31.

Man. Stat., sec. 20.

Indemnity
of regis-
trars, etc.,
for *bona*
fide acts.

32. The registrar shall not, nor shall any deputy registrar or any person acting under authority of the registrar, be liable to any action or proceeding for or in respect of any act *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers given by this Act, or any order or general rule made in pursuance of this Act. 49 V., c. 26, s. 32.

Man. Stat., secs. 23 and 135.

Office
hours.

33. The land titles office shall be kept open on all days except Sundays and legal holidays, between the hours of ten in the forenoon and four in the afternoon, during which time either the registrar or his deputy shall be in attendance. 49 V., c. 26, s. 33.

See Man. Stat., sec. 24. In the Territories the word "holiday" includes New Year's Day, Epiphany, the Annunciation, Good Friday, Ascension Day, Corpus Christi, St. Peter and St. Paul, All Saints' Day, Conception Day, Ash Wednesday, Easter Monday, Christmas Day, the birthday of the reigning Sovereign, and any general fast or thanksgiving, R. S. C. cap. 1 sec. 7 (26).

REGISTRATION.

Form of in-
struments
for regis-
tration.

34. The registrar shall not register any instrument purporting to transfer, or otherwise to deal with or affect any land under the provisions of this Act, except in the manner herein provided, nor unless such instrument is in accordance with the provisions hereof; but any instrument substantially in conformity with the forms in the schedule to this Act, or an instrument of like nature, shall be sufficient: Provided, that the registrar shall have power to reject any instrument appearing to be unfit for registration. 49 V., c. 26, s. 34.

Man. Stat., sec. 77. See also secs. 59 and 64 *post*.

See secs. 41, 59 and 64 *post* as to the necessity of registration to render instruments operative.

As to meaning of "*under the provisions*," *etc.*, see sec. 4 *ante*, and notes to sec. 59 *post*.

35. The registrar shall not make any entry in the register of any notice of trusts, whether expressed, implied, or constructive. 49 V., c. 26, s. 35. No entry of trust.

Man. Stat., sec. 86; and sec. 28 of Appendix.

36. The registrar may require the owner of any land within his registration district desiring to transfer or otherwise to deal with the same under the provisions of this Act, to deposit with the registrar a map or plan of such land, with the several measurements marked thereon, certified by a licensed surveyor, and upon one of the following scales:— Plans of sub-division.

(a) If the land, or the portion thereof proposed to be transferred or dealt with, is of less area than one acre, then such map or plan shall be on a scale not less than one inch to two chains; Scale. If less than one acre.

(b) If such land, or the portion thereof proposed to be transferred or dealt with, is of greater area than one acre, but not exceeding five acres, then such map or plan shall be on a scale not less than one inch to five chains; Over one acre.

(c) If such land, or the portion thereof proposed to be transferred or dealt with, is of greater area than five acres, but not exceeding eighty acres, then such map or plan shall be on a scale not less than one inch to ten chains; Over five acres.

(d) If such land, or the portion thereof proposed to be transferred or dealt with, is of greater area than eighty acres, then such map or plan shall be on a scale of one inch to twenty chains; Exceeding eighty acres.

2. Such owner shall sign the said plan and declare the accuracy of the same before the registrar or a justice of the peace: Owner to attest plan.

3. If such owner neglects or refuses to comply with such requirements as aforesaid, it shall not be incumbent on the registrar to proceed with the registration of such transfer or dealing: On default.

4. Subsequent sub-divisions of the same land may be delineated upon a duplicate of the map or plan of the same so deposited, if such map is upon a sufficient scale, in accordance with the provisions herein contained; and the correctness of the delineation of each such sub-division shall be acknowledged in the manner prescribed for the case of the deposit of an original map: Subsequent divisions.

5. Where parts of different legal sub-divisions are included in the same transfer, the map shall represent the whole of such legal sub-divisions. Parts of legal sub-divisions.

Proviso. and shall indicate the location of the lands to be transferred : Provided always, that this shall not be necessary in the case of lots in a city, town or village, the plan of which has been registered. 49 V., c. 26, s. 36.

Man. Stat., secs. 68 (8) and 69.

**Adminis-
tration of
oaths, etc.** **37.** The registrar may administer any oath or take any affirmation or declaration in lieu of an oath from any one entitled by law to affirm or declare. 49 V., c. 26, s. 37.

Man. Stat., sec. 56 (5) and notes.

**The "Re-
gister" and
entries
therein.** **38.** The registrar shall keep a book or books, which shall be called 'The Register,' and shall enter therein duplicates of all certificates of titles, to be issued as hereinafter provided for; and each certificate of title shall constitute a separate folio of such book, and the registrar shall record therein the particulars of all instruments, dealings and other matters by this Act required to be registered or entered in the register, and affecting the land included under such certificate of title.

49 Vic. cap. 26, sec. 38, as amended by 51 Vic. cap. 20, sec. 8.

Man. Stat., Rule 9, Sch. S, sec. 26.

**The "Day-
book": its
form and
use.** **39.** The registrar shall also keep a book or books which shall be called the "day-book," and in which shall be entered by a short description every instrument which is given in for registration, with the day, hour and minute of filing; and for purpose of priority between mortgagees, transferees and others, the time of filing shall be taken as the time of registration; and the registrar, in entering memorials upon the grants and certificates of titles embodied in the register, and in endorsing a memorial upon an instrument to be issued, shall take the time from the day-book as the time of registration. 49 V., c. 26, s. 39.

Priority.

**Time of
filing.**

Man. Stat., Rule 10, Sch. S, sec. 26 and sec. 74, and notes to sec. 58 pp. 101-103 *ante*.

**Registra-
tion of
grants.**

**Transfers
and other
instru-
ments.**

40. Every grant shall be deemed and taken to be registered under the provisions and for the purposes of this Act, so soon as the same has been marked by the registrar with the folio and volume on and in which it is embodied in the register; and every transfer and other instrument purporting to transfer, or in any way to affect land under the provisions of this Act, shall be deemed to be so registered as soon as a memorial thereof, as hereinafter described, has been entered in the register upon the folio constituted by the existing grant or certificate of title of such land. 49 V., c. 26, s. 40.

Man. Stat., secs. 58 and 74. See notes to secs. 49 and 64 *post*.

11. Except as hereinafter otherwise provided, every instrument presented for registration shall, unless a Crown grant, be attested by a witness, and shall be registered in the order of time in which it is presented for that purpose; and instruments registered in respect of or affecting the same estate or interest shall, notwithstanding any express, implied or constructive notice, be entitled to priority the one over the other, according to the time of registration and not according to the date of execution; and the registrar, upon registration thereof, shall file the same in his office; and so soon as registered, every instrument in conformity with the provisions of this Act shall, for the purposes of this Act, be deemed and taken to be embodied in the register as part and parcel thereof, and such instrument, when so constructively embodied and stamped with the seal of the registrar, shall thereupon create, transfer, surrender or discharge, as the case may be, the estate or interest therein mentioned in the lands mentioned in the said instrument. 49 V., c. 26, s. 41.

Man. Stat., secs. 58 and 74. See notes to sec. 59 and sec. 64 *post*.

By the two preceding sections, the priority of instruments is fixed absolutely according to the order of registration, as shewn by the "Day Book." The instrument does not become effective as to the land until by registration it has been "constructively embodied in the Register," and the official seal impressed upon it; *Shore v. Green*, 6 Man. L. R. 328.

Compare sec. 34 *ante* and 64 *post*, and notes by Messrs. McCaul and Bown, 9 Can. L. T. 30.

42. Every memorial entered in the register shall state the nature of the instrument to which it relates, the day, hour, and minute of the presentation of such instrument for registration, and the names of the parties thereto, and shall refer by number or symbol to such instrument, and shall be signed by the registrar. 49 V., c. 26, s. 42.

Man. Stat., Rule 14, Sch. S, sec. 26.

43. Whenever a memorial of any instrument has been entered in the register, the registrar shall, except in the case of transfer or other dealing endorsed upon any certificate or other instrument as herein provided, record the like memorial on the duplicate certificate or other instrument evidencing title to the land intended to be dealt with or in any way affected; and the registrar shall endorse on every instrument so registered a certificate of the day, hour and minute at which

Attestation
of instru-
ments for
registra-
tion.

Order of
priority.

Effect of
registra-
tion.

Entry
of time of
registra-
tion.

the said instrument was presented to be registered, and shall authenticate each such certificate by signing his name and affixing his seal thereto, and such certificate shall be received in all courts of law as conclusive evidence that such instrument has been duly registered. 49 V., c. 26, s. 43.

Man. Stat., sec. 76 and Rules 13-16, p. 67 *ante*.

Letters
patent
bound.

44. Whenever any land is granted in the Territories by the Crown, the letters patent therefor, when issued, shall be forwarded from the office whence the same are issued to the registrar of the registration district in which the land so granted is situated, and the registrar shall retain the letters patent in his office and bind the same; and a certificate of title, with any necessary qualifications, shall be granted to the patentee:

See sec. 57 *post*. This practice of binding the original grants is in accordance with the custom of the Australian colonies. See notes to sec. 59 *post*.

Certificate
on Crown
grant.

2. Such certificate shall be issued to the patentee free of all the fees and charges herein provided to be paid, if at the time of the issue of such certificate there are no registered encumbrances affecting such land:

Hudson
Bay Com-
pany lands.

3. The notification to the Hudson Bay Company by the Minister of the Interior, under the provisions of sub-section seven of section twenty-two of 'The Dominion Lands Act,' of the survey and confirmation of the survey of any township or part of a township, shall be accepted by the registrar as equivalent to, and dealt with by him in all respects in the same manner as if the said notification were letters patent in favor of the said company, granting to the said company in fee simple the sections or three-quarter parts of sections to which they are entitled in such townships or parts of townships under the provisions of 'The Dominion Lands Act;'

Hudson
Bay Com-
pany lands.

4. Any such notifications which have already been issued may be filed by the Company with the registrar of the district within which the lands affected thereby are situated, and, for the future, such notifications shall be issued in duplicate, one to be sent to the said Company and one to the registrar of the proper district:

Canadian
Pacific and
railway
lands.

5. A notification to the registrar from the Minister of the Interior, that the lands described therein have been granted to the Canadian Pacific Railway Company or to any railway company entitled to Dominion Lands under the authority of an Act of the Parliament of Canada, shall be accepted by the registrar, and dealt with by him in all respects as if the same were letters patent in favor of such company; the notification shall state whether the grant be in fee simple or for years,

and shall also specify any mines, minerals, rights or easements which are excepted from the grant.

49 Vic. cap. 26, sec. 44, as amended by 51 Vic. cap. 20, sec. 9.

Compare sees. 37-39 of the Manitoba Statute.

A "Crown grant" is an "Instrument, (sec. 3 (*l*) *ante*); see sees. 34, 41, 59, 64, as to necessity of registration; also notes by Messrs. McCaul and Bown, 9 Can. L. T. 30-37.

15. The owner of any estate, or interest in any land, whether legal or equitable, letters patent for which have already issued from the Crown, ^{lands already patented,} may apply under the provisions of this Act. 49 V., c. 26, s. 45.

2. If, at the time of the issue of the certificate of title, there are no fees, registered encumbrances or conveyances affecting such land, the certificate may be issued to the patentee upon the payment of such fees as are fixed in that behalf by tariff made from time to time by the Governor in Council; but no fees shall be payable therefor under the provisions of Exception, sub-section two of section one hundred and thirty-three of this Act.

This sub-section was added by 51 Vic. cap. 20, sec. 10.

See Form F, p. 237 *post*.

Compare sees. 40 and 59 Man. Stat.

See notes to sec. 44 *ante*, and sec. 59 *post*.

16. The application therefor shall be made in writing in the form E Application in the schedule to this Act, to the registrar of the registration district in which the land is situated, and shall be verified by the affidavit of the applicant, or some one on his behalf, accompanied by ^{Proofs required with it.}

(a) All deeds in possession of the applicant, if any;

(b) A certificate showing all registrations affecting the title, down to the time when such application is filed, with copies of any registered documents, the originals or duplicates whereof he is unable to produce;

(c) A certificate from the sheriff showing that there is no execution in his hands against the applicant. 49 V., c. 26, s. 46.

(d) A certificate from the treasurer of the municipality wherein the lands lie, or other proper officer, showing that at the date of the filing of the application such lands are not chargeable with any arrears of municipal charges, rates or assessments. ^{Municipal charges.}

51 Vic. cap. 20, sec. 11.

Registered
deeds need
not be pro-
duced.

But in no case shall it be necessary for any applicant to produce copies of any registered documents under the foregoing provisions of this section, if the originals of such documents are of record at the time when the application is made, in the office of the registrar to whom the application is made.

50-51 Vic. cap. 30, sec. 3.

See Rules 2, 3, 5, 6 and 7, Sch. S, sec. 26 Man. Stat.

FORM E.

APPLICATION TO BRING LAND UNDER THE OPERATION OF "THE TERRITORIES REAL PROPERTY ACT."

To the registrar of registration district :

I (*insert name and addition*), hereby apply to have the land hereinafter described brought under the operation of "*The Territories Real Property Act*." And I declare:—

1. That I am the owner (*or agent for* , the owner) of an estate in fee simple in possession (*or of an estate of freehold in possession for my life, or otherwise as the case may require*) in ALL THAT piece of land, being (*here describe the land*).

2. That such land, including all buildings and other improvements thereon, is of the value of dollars, and no more.

3. That there are no documents or evidences of title affecting such land in my possession, or under my control, other than those included in the schedule hereto.

4. That I am not aware of any mortgage or encumbrance affecting the said land, or that any other person hath any estate or interest therein at law or in equity, in possession, remainder, reversion or expectancy (*if there be any add: other than as follows, and set the same forth.*)

5. That the said land is now occupied (*if unoccupied, prefix (un) to occupied; if occupied, add by whom, and state the name and addition of the occupant and the nature of his occupancy*).

6. That the names and addresses, so far as known to me of the occupants of all lands contiguous to the said land, are as follows:—

7. That the names and addresses, so far as known to me, of the owners of all lands contiguous to the said land, are as follows:—

(*If the certificate of title is not to issue to the applicant, add*): And I direct the certificate of title to be issued in the name of (*insert name and addition*).

Dated this day of , 18 .

Made and subscribed at
in the presence of

,
.

(Signature.)

SCHEDULE OF DOCUMENTS REFERRED TO.

AFFIDAVIT.

Territories of Canada, } I,
District of , } of
To WIT: } make oath and say:

1. That I am the applicant named in the application hereto annexed.
2. That the several statements contained in the said application are true, to the best of my knowledge and belief.

Sworn before me at the of
in the of , this
day of , A.D. 18 .
J.P. for the said (Signature.)

47. Upon the filing of such application, if the applicant is the original Clear titles grantee of the Crown of the land and no deed, mortgage or other encum-^{registered}brance, or instrument, or caveat affecting the title appears to have been ^{forthwith.} registered; or if not such original grantee, all the original title deeds are produced and no person other than the applicant is in actual occupation of the land in question, and no caveat has been registered,—and if, in every case where any other person is admitted to be interested in the land, whether as mortgagee or otherwise, such person is a consenting party to such application, the registrar, if he entertains no doubt as to the title of the applicant, shall, on payment of the fees prescribed, register the said land under this Act. 49 V., c. 26, s. 47.

See sec. 57 *post* as to manner of registration.

Compare secs. 43 and 44 of the Manitoba Statute, and notes pp. 86 and 87 *ante*.

2. If there is any mortgage or encumbrance outstanding against the Mortgage land at the date of the said application, the filing with the registrar of the ^{discharged} original mortgage or instrument creating the encumbrance, or a copy ^{by receipt} thereof having indorsed thereon or attached thereto a receipt or acknow- ^{of mort-} ledge- ^{gagee} ment of the amount thereby secured, signed by the mortgagee or encumbrancee and proved by the affidavit of an attesting witness, shall ^{thereon.} operate as a discharge of such mortgage or encumbrance, and as a reconveyance of the land to the mortgagor or encumbrancer or the person claiming the land through such mortgagor or encumbrancer.

3. Such receipt or acknowledgment may be in the form M. 1, appended ^{Form of re-} to this Act. ^{ceipt.}

51 Vic. cap. 20, sec. 12.

(Signature.)

FORM M 1.

RECEIPT OR ACKNOWLEDGMENT OF PAYMENT OF MORTGAGE OR OTHER ENCUMBRANCE.

I, C. D., the mortgagee, (encumbrancee or assignee *as the case may be*) do acknowledge to have received all the moneys due or to become due under the within written mortgage (or encumbrance, *as the case may be*) and that the same is wholly discharged.

In witness whereof I have hereunto subscribed my name this day of _____, 18__.

Signed by the above named C. D.,
this _____ day of _____
A.D., 18__, in the presence of _____

Signature.

X. Y.

51 Vic. cap. 20, sec. 24.

If title not clear application sent to judge.

48. If, upon the application being made as aforesaid, it appears that any person other than the applicant is interested in the said lands, whether as mortgagee or otherwise, who is not a party to the application, or in case any person other than the applicant is in possession of the lands in question, or in case a caveat has been registered against the said lands, or the registrar entertains any doubt as to the title of the applicant, he shall forthwith, having given the applicant a certificate of the filing of such application, transmit the application, with all evidence supplied, to the judge, to be dealt with as hereinafter mentioned. 49 V., c. 26, s. 48.

Compare sec. 119 Manitoba Statute, page 175 *ante*.

See sec. 114 and Form S *post* as to referred cases after registration of title.

Judge to examine titles.

Powers of judge.

49. The judge shall examine, without delay, all titles which are submitted to him, and for such purpose shall hear all persons interested, or claiming to be interested, and shall hear and consider the claims as against the applicant, of any person who is in possession of the lands; and he shall have and exercise all the powers for compelling the attendance of persons and the production of documents, which usually appertain to courts of civil justice and the judges thereof in civil actions brought therein. 49 V., c. 26, s. 49.

Man. Stat. secs. 43, 44, 68 and 121.

Adverse claims.

50. Any person having an adverse claim or a claim not recognized in the application for registration may, at any time before the judge has approved of the applicant's title, file with the registrar a short statement

of his claim, verified by affidavit, and shall serve a copy thereof on the applicant, or his solicitor or agent. 49 V., c. 26, s. 50.

This provision was removed in Manitoba by 50 Vic. cap. 41, sec. 18, which repealed secs. 53 and 54 of the Act of 1885, (58 Vic. cap. 28.)

51. If any adverse claim is filed, the judge shall proceed to examine into and adjudicate thereon, and no certificate of title shall be granted until such adverse claim has been disposed of. 49 V., c. 26, s. 51. Judge to decide.

52. In any case before him, the judge shall, if any person other than the applicant appears to be interested, and in any other case, may direct that notice of the application be published in some newspaper or newspapers in such form and for such period as the judge thinks expedient, and no order for registration shall be granted by him until after the expiration of at least four weeks from the first publication of such notice, if he has directed the same to be published. 49 V., c. 26, s. 52. Publication of notice of application.

Compare sec. 52 of the Man. Stat. as to the service of estoppel notices, pp. 94 and 95 *ante*.

53. The judge, if satisfied with the applicant's title, shall thereupon make an order directing the registrar, after the expiration of four weeks from the date thereof, unless in the meantime such order is appealed from, to register the same and issue to the applicant a certificate of title under this Act, which order, together with all documents and proofs submitted in the case, shall be transmitted to and retained by the registrar in his custody. 49 V., c. 26, s. 53. Registration of title after four weeks. Appeals.

Man. Stat., secs. 43 and 47.

54. After registration, on application by the person entitled thereto, and payment of the prescribed fees, a certificate of title shall be granted by the registrar in the form F in the schedule to this Act signed by him, and sealed with the seal of his office, and a copy thereof shall be preserved by the registrar in his office, in the register; and the registrar shall indorse upon the certificate of title a memorial of every mortgage, encumbrance, lease, rent charge, term of years, or other dealing affecting the land, and such memorial shall be indorsed upon the duplicate in the possession of the owner, as well as upon the duplicate which is in the register. 49 V., c. 26, s. 54. Certificate of title. Memorials on certificate.

Form F., as amended by Statutes of 1887 and 1888, follows sec. 57 *post*, p. 237.

By Statute 51 Vic. cap. 20, sec. 22, it was provided that the Governor in Council might, from time to time, vary the form of the certificate of ownership provided for and provide that the same shall specially mention any subsisting reservations contained in the original grant from the Crown.

See Man. Stat., sec. 60.

Subse-
quent
transfers.

55. Upon any subsequent transfer of the land mentioned in any such certificate, the certificate of title to be issued to the transferee shall be issued by the registrar of the registration district where the land is situate, in the prescribed form. 49 V., c. 26, s. 55.

Man. Stat., secs. 59, 61, and 62, 81, and Rules 16 and 22, Sch. S, sec. 26.

Post office
address.

56. Every registered owner or mortgagee of any land or interest therein shall deliver to the registrar a memorandum in writing of some post office address within the Territories, to which it shall be sufficient to mail all notices that under this Act are required to be sent to such registered owner or mortgagee and every registered owner or mortgagee shall, from time to time, in like manner, notify the registrar of any change in his post office address; and every registered owner or transferee of any

Receipt for
certificate.

registered interest shall, if required by the registrar so to do, before the delivery of any certificate of title, sign a receipt therefor in his own hand writing, or otherwise furnish the registrar with his signature, so as to

Proviso.

prevent personation as far as possible: Provided, that the registrar may proceed without such memorandum of address.

49 Vic. cap. 26, s. 56, as amended by 51 Vic. cap. 20, sec. 13.

Man. Stat., Rules 15, Sch. S, sec. 26.

Every re-
gistration
to be on a
separate
folio.

57. Every registration of ownership shall be made on a separate folio of the register, and upon any transfer of ownership the register of the transferor's title shall be cancelled, and the title of the transferee shall thereupon be entered upon a new folio; and the registrar shall note upon the folio of the title of the transferor the number of the folio of the transferee's title, and upon that of the transferee the number of the register of the transferor, so that reference can be readily made from one to the other, as occasion requires. 49 V., c. 26, s. 57.

Man. Stat., sec. 58, and Rules 9 and 16, Sch. S, sec. 26.

FORM F.

(As amended.)

CERTIFICATE OF OWNERSHIP.

Canada Territories,

Registration District.

This is to certify that A. B., of _____ is now the owner of an Form F. estate (*describe the estate*) of and in (*describe the property*), subject to the encumbrances, liens and interests notified by memorial underwritten or indorsed hereon, or which may hereafter be recorded in the register of title.

In witness whereof I have hereunto subscribed my name and affixed my seal this _____ day of _____, A.D. 18 ____.

If the title is possessory, say :

The title of A. B. is subject to the claims (if any) which can be enforced to the said land by reason of any defect in the title of (*name of the first registered owner*).

And if subject to a mortgage, say :

The title of A. B. is subject to mortgage, dated the _____ day of _____, made by A. B. to W. B., to secure (*here state the amount secured, the rate of interest per cent. per annum, and the respective dates from which the principal and interest are secured*) payable as therein mentioned, (*If mortgage is discharged, say :* Discharged by certificate (*here state the distinguishing letter or number of the register and the number of the folio therein*)).

And if subject to a lease, say :

The title of A. B. is subject to a lease, dated the _____ day of _____, made by A. B. to Y. Z., for the term of _____ years.

When the transfer is absolute, say :

This certificate is cancelled and a new certificate of title issued.

(Signature.)

49 Vic. cap. 26, Sch. Form F. as amended by 50-51, Vic. cap. 30, sec. 7, and 51 Vic. cap. 20, sec. 23.

See note to sec. 54 *ante* as to varying form.

EFFECT OF REGISTRATION.

58. In every instrument charging, creating or transferring any estate or interest in land under the provisions of this Act, there shall be implied the following covenant by the person charging, creating or transferring such estate or interest, that is to say: That he will do such acts and execute such instruments as, in accordance with the provisions of this Act, are necessary to give effect to all covenants, conditions and purposes expressly set forth in such instrument, or by this Act declared to be

Covenant
implied
under this
Act.

implied against such person in instruments of a like nature. 49 V., c. 26, s. 58.

Compare Man. Stat., sec. 80, 93, 94, 116 and 144. See sec. 69 *post*.

Effect of
registra-
tion.
Exception.

Instru-
ments pre-
sented to-
gether.

59. No instrument, until registered under this Act, shall be effectual to pass any estate or interest in any land (except a leasehold interest for three years or for a less period), or render such land liable as security for the payment of money; but upon the registration of any instrument in manner hereinbefore prescribed, the estate or interest specified in such instrument shall pass, or, as the case may be, the land shall become liable as security, in manner and subject to the covenants, conditions and contingencies set forth and specified in such instrument or by this Act declared to be implied in instruments of a like nature; and if two or more instruments executed by the same owner, and purporting to transfer or encumber the same estate or interest in any land, are presented at the same time to the registrar for registration and indorsement, he shall register and indorse that instrument under which that person claims property, who presents to him the certificate of title of such land for that purpose. 49 V., c. 26, s. 59.

See sec. 41 *ante*. Compare sec. 74 of the Manitoba Statute. See notes pages 101-103 and 206 *ante*.

In re Thompson, 10 Can. L. T. 44, referred by the Inspector and the Registrar of the East Saskatchewan District under sec. 114 *post*, the following facts were stated.

The land had been sold by the patentees to one F., who on 8th March, 1887, sold it to T., giving him a deed in fee simple. This deed was not filed or registered until after an execution issued against F. had been placed in the Sheriff's hands and charged upon the land by the filing of a copy and memorandum on 8th June, 1888. On 4th March, 1889, T. applied to have his title registered, producing the above deed, and in the certificate of title issued to him, reference was made to the execution against F. as a charge upon the lands.

The question submitted was whether the Registrar was right in issuing the certificate subject to the execution.

It was contended that the effect of this section was that F. was still to be deemed the owner when the execution against him was filed by the Sheriff, as no title or interest was passed to T. for want of registration, and consequently that the lands were charged by the writ, and *contra* that this section did not apply to lands patented prior to 1st January, 1887, (as in this case) until after application for registration of title had been made, that the title passed to T. on delivery of the deed and the land was not bound by the execution.

Mr. Justice McGuire said that at first sight section 4, *ante* would seem to indicate that on and after the 1st January, 1887, the various provisions of the Act were intended to apply to all lands and all dealings therewith, but in subsequent sections beginning with sec. 34, *ante* the word "land" is qualified by the uniform phrase "under the provisions of this Act." Now if the words "subject to the provisions of this Act" in section 4 have the wide meaning they appear to have, all lands would be *under the provisions* of the Act, and it would be not only unnecessary but misleading to use the phrase "*under the provisions of this Act*," in section 34 and the many other places in which it appears. These words are evidently used to distinguish lands which *are*, from others which *are not* "under the provisions, etc.," so we must see if the words "*subject to*" in section 4 have not a different meaning from the word "*under*" in section 34, etc. Looking at Worcester's dictionary I find that "subject" in addition to its primary meaning of "placed under" also means "exposed," "liable," in this sense it is used by Shakespeare "most subject is the fattest soil for weeds," and by Dryden "all human things are subject to decay," meaning not that "fattest soils" are actually "weedy," or "all human things" actually are in a state of "decay," but only that they are respectively "liable to" or exposed to become so whenever certain conditions are

fulfilled. If we take this meaning we may interpret section 4 as saying that all lands may become under this Act, and then sections 44 and 45 deal with two classes; the former with lands where patent had not issued on 1st January, 1887, the latter with lands where the patent has issued before that date. In the former case the lands come under the Act by the patent being transmitted direct to the Registrar, whereupon he issues a certificate to the patentee; in the latter an application may be made by the owner, the procedure for which is provided, and when on that application a certificate is issued, then the land becomes "under the provisions of the Act"; but until such application is made the land is not actually under the Act, and the registration provisions do not apply.

Sections 5 to 17 both inclusive form a part of the Act distinct from the rest, and they took effect from the 1st January, 1887, and they are so interpreted by the amending Act of 1888, which again furnishes another reason for distinguishing between these thirteen sections and the rest of the Act. Since Parliament by limiting the interpretation of these sections implicitly declares that the whole Act was not "intended to extend, etc." (1). Another circumstance strongly confirming this view is that in these sections we find the words "deed" and "deed or transfer" repeated, and section 6 defines what a "deed" shall convey. Now the instruments to be used under the Act are none of these *deeds*, not being under seal, and these sections therefore seem clearly to provide for the use both of deeds which must mean instruments under the law as it existed before the Act, and "transfers," the new form of conveyance introduced by the Act, according as the land is or is not "under the provisions" of the Act. Section 34 deals with lands which are "under the provisions" of the

(1) Compare McCaul and Bown's Notes, 9 Can. L. T. 27.

Act, and the form of instruments "purporting to transfer, etc.," such lands, and it is to be noted that the word "transfer" and not "deed" is used here as being the term appropriate to conveyances under the Act. Section 58 also expressly deals with lands under the provisions of the Act, and while section 59 does not contain the qualifying phrase. I think that it must be read along with the preceding sections, and as one of the seven sections (58 to 64) put under the heading, "Effect of Registration," and the concluding words of section 59 seem to presuppose the existence of a certificate of title and therefore confine the view that it applies only where the land has been brought under section 44 or section 45. Moreover section 64 declares that "after registration of the title to any land under the provisions of this Act no instrument shall be effectual to pass any interest, etc., unless two things occur: (a) It is executed in accordance with the Act, and (b) it is duly registered thereunder. But section 34 had already dealt with (a), and if section 59 applied to all lands and all instruments then it had already rendered impossible the registering of the instrument whether before or after registration of title. In order, however, to give section 64 a reasonable construction it is necessary to read section 59 as applying only to lands after issue of a certificate of ownership and the instruments in the schedule, and then section 64 as declaring that as against a *bona fide* transferee of the land under this Act the conditions therein mentioned must be complied with. Notwithstanding the T. R. P. Act, as far at least as lands are concerned which have not yet been brought under the Act by secs. 44 or 45, the old law is in force and a deed passes the interest it purports to pass, and on delivery of the deed to T., F. ceased to be owner of or in any way entitled to any interest whatever in the land in question, and the execution against F. was no lien or charge thereon.

A different view of the application of the Act has been taken by Messrs. McCaul and Bown in some very useful notes on the Territorial Act furnished by them to the Canada Law Times, vol. 9, pages 23-28, where these provisions of the Act are discussed and comparison made with the Manitoba decision *In re Irish*, 2 Man. L. R. 361; and the proposition submitted that the Territories Real Property Act is applicable to all lands in the Territories, whether patented or unpatented, when it comes into force, and that its provisions are practically compulsory on all owners.

Registered owner's title to be absolute.

Exceptions.

How priority shall be computed.

Implied qualifications.

Reservations.

Municipal charges for three years.

60. The registered owner of land or of any estate or interest in land, under the provisions of this Act, shall hold the same subject (in addition to the incidents implied by virtue of this Act) to such encumbrances, liens, estates or interests, as are notified on the folio of the register constituted by the certificate of title to such land, absolutely free from all other encumbrances, lien, estates or interests whatsoever,—except in case of fraud wherein he has participated or colluded, and except the estates or interests of all persons entitled to or interested in any portion of land that is, by wrong description of parcels or of boundaries, erroneously included in the certificate of title, lease or other instrument evidencing the title of such registered owner, and except the estate or interest of an owner claiming the same land under a prior certificate of title registered under the provisions of this Act:

2. Such priority shall, in favor of any person in possession of land, be computed with reference to the grant or earliest certificate of title under which he or any person through whom he derives title, has held such possession, notwithstanding the surrender of such certificate, in exchange for a new certificate upon any transfer or dealing. 49 V., c. 26, s. 60.

See sec. 63 *post*.

Man. Stat., ss. 64, 85, 133, 139, 143.

61. The land mentioned in any certificate of title granted under this Act shall, by implication, and without any special mention in the certificate of title, unless the contrary is expressly declared, be subject to,—

(a) Any subsisting reservations contained in the original grant of the said land from the Crown;

(b) Any municipal charges, rates or assessments for the year current at the date of such certificate, or which are thereafter imposed on the said land, or which have theretofore been imposed for local improvements and

which are not then due and payable, and any such charges, rates or assessments in respect of which the right of the municipality to have recourse against the land is not matured, not exceeding three years' charges, rates or assessments in the whole ;

(c) Any subsisting right of way or other easement, howsoever created Easements.
upon, over or in respect of the said land ;

(d) Any subsisting lease or agreement for a lease for a period not exceeding three years, where there is actual occupation of the said land under the same ; Leases for not more than three years.

(e) Any decrees, orders or executions against or affecting the interest of the registered owner in such land, which have been registered and maintained in force against such registered owner ; Registered judgments, etc.

(f) All public highways embraced in the description of the lands included in any certificate ; and— Highways.

(g) Any right of appropriation which may, by statute, be vested in any person or body corporate. 49 V., c. 26, s. 61. Expropriation.

See note to sec. 51 *ante*, and sec. 131 *post*, as to reservations of mining rights appearing in the grant. See also preceding section and

Man. Stat., secs. 63, 79 and 84.

62. Every certificate of title granted under this Act shall (except in case of fraud, wherein the registered owner has participated or colluded), so long as the same remains in force and uncanceled under this Act, be conclusive evidence at law and in equity as against Her Majesty and all persons whomsoever that the person named in such certificate is entitled to the land included in such certificate, for the estate or interest therein specified, subject to the exceptions and reservations mentioned in the next preceding section,—except so far as regards any portion of land, by wrong description of boundaries or parcels included in such certificate, and except as against any person claiming under any prior certificate of title granted under this Act in respect of the same land ; and for the purpose of this section that person shall be deemed to claim under a prior certificate who is holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate granted, notwithstanding that such certificate has been surrendered and a new certificate granted upon any transfer or dealing. 49 V., c. 26 s. 62. Certificate to be conclusive evidence of title. Exceptions Claimant under prior certificate

See secs. 60 and 61 *ante* and notes thereto.

Compare sec. 64 and 66 Man. Stat.

As to omission or non-receipt of notices.

63. A purchaser or encumbrancee for valuable consideration shall not be affected by the omission to send any notice by this Act directed to be given or by the non-receipt thereof. 49 V., c. 26, s. 63.

Man. Stat., 64, 65, 85, 133 and 143.

Instruments must be according to Forms.

64. After the registration of the title to any land under the provisions of this Act, no instrument shall be effectual to pass any interest therein or to render such land liable as security for the payment of money as against any *bona fide* transferee of the said land under this Act, unless such instrument is executed in accordance with this Act, and is duly registered thereunder. 49 V., c. 26, s. 64.

See sec. 34 *ante*.

Compare sec. 77 Man. Stat.

See reference to this section in remarks of the Judge *In re Thompson*, noted under section 59 *ante*, and notes as to the effect of registration, under section 41 *ante*.

An unregistered deed has no effect upon lands under the "new system." The Act created an entirely new system of dealing with land. The intention was to recognize only the registered title: *per* Killam, J., in *Shore v. Green*, 6 Man. L. R. 327 (*vide* p. 206 *ante*).

TRANSFER.

Memorandum.

65. When land under the provisions of this Act, or any portion of such land, is intended to be transferred, or any right of way or other easement is intended to be created or transferred, the registered owner may execute a memorandum of transfer in the form G in the schedule to this Act, which memorandum shall, for description of the land intended to be dealt with, refer to the grant or certificate of title of such land, or shall give such description as is sufficient to identify the same, and shall contain an accurate statement of the estate, interest or easement intended to be transferred or created, and a memorandum of all leases, mortgages and other encumbrances to which the same are subject; and such transfer, if it is endorsed on the instrument evidencing the title of the transferer, need not be executed in duplicate. 49 V., c. 26, s. 65.

What it must contain.

Man. Stat., secs. 72, 74.

Compare secs. 34, 41, 59, 64, *ante*, as to necessity of registration.

FORM G.

TRANSFER.

I, A. B., being registered owner of an estate (*state the nature of estate*), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (*or indorsed hereon*), in all that certain tract of land containing acres, more or less, and being (part of) section, township , range , in the (as the case may be), (*here state rights of way, privileges, easements, if any, intended to be conveyed along with the land and if the land dealt with contains all included in the original grant, refer thereto for description of parcels and diagrams; otherwise set forth the boundaries and accompany the description by a diagram*), do hereby, in consideration of the sum of \$, paid to me by E. F., the receipt of which sum I hereby acknowledge, transfer to the said E. F., all my estate and interest in the said piece of land. (*When a lesser estate, then describe such estate.*)

In witness whereof, I have hereunto subscribed my name this
day of , 18 .

Signed on the day above named, }
by said A. B., in the presence } (*Signature.*)
of G. A. }

49 Vic. cap. 26, sch. form G.

66. Whenever any easement or any incorporeal right in or over any land under the provisions of this Act, is created for the purpose of being annexed to or used and enjoyed together with other land under the provisions of this Act, the registrar shall also enter a memorial of the instrument creating such easement or incorporeal right upon the folio of the register book constituted by the existing certificate of title of such other land. 49 V., c. 26, s. 66.

Man. Stat., sec. 79.

67. If the memorandum of transfer purports to transfer the transferer's interest in the whole or part of the land mentioned in any grant or certificate of title, the transferer shall deliver up the certificate of title of the said land, and the registrar shall, on payment of the prescribed fee, enter in the register and on the duplicate certificate of title, a memorandum cancelling the same, either wholly or partially, according as the memorandum of transfer purports to transfer the whole or part only of the interest of the transferer in the land mentioned in such certificate of title, and setting forth the particulars of the transfer. 49 V., c. 26, s. 67.

Man. Stat., sec. 73, and Rule 17, Sch. S, sec. 26.

New certificate of title to transfer

Canceled certificate retained

48. The registrar, upon cancelling any certificate of title, either wholly or partially, pursuant to any such transfer, and modifying the prescribed form, shall make out to the transferee a certificate of title to the land mentioned in such memorandum of transfer; and the registrar shall retain every memorandum of transfer and cancelled or partially cancelled certificate of title, and in the case of a partially cancelled certificate of title shall return the duplicate to the grantor after the memorandum partially cancelling the same has been entered thereupon, or may, whenever required thereto by the owner of an unsold portion of land included in any such partially cancelled grant or certificate of title, or in case of a proposed transfer of such portion, or of any part thereof, or whenever it appears more expedient, make out to such owner or transferee a certificate of title for such portion or any part thereof, at which time the owner or transferee, upon the delivery of the partially cancelled certificate of title to the registrar, to be cancelled and retained. 49 V., c. 96, s. 48.

This section is printed as amended by 51 Vic. cap. 20, sec. 14.

The amendment consisted in striking out the words "and every such certificate of title shall refer if practicable to the original grant, of such land, and to the instrument of transfer."

Compare sees. 73, 76 and Rule 22, Sch. B, sec. 26 of the Manitoba Statute.

Implied covenants by transferor based on estate

49. In every instrument transferring an estate or interest in land under the provisions of this Act, subject to mortgage or encumbrance, there shall be implied the following covenant by the transferor, that is to say: That such transferor will pay the interest, annuity or rent charge secured by such mortgage or encumbrance, after the date and at the time specified in the instrument creating the same, and will indemnify and keep harmless the transferee from and against the principal sum or other moneys, secured by such instrument, and from and against all liability in respect of any of the covenants therein contained or under this Act implied, on the part of the transferor. 49 V., c. 26, s. 49.

See sec. 58 *ante*, and sec. 86-88 *post*. All implied covenants may be modified; *vide* sec. 121 *post*.

Man. Stat., sees. 80, 96, 99 and 144.

LEASES

Leases for three years or more

50. When any land under the provisions of this Act is intended to be leased or demised for a life or lives, or for a term of three or more years,

of title, either
and vesting the
benefit of title to
and the redemption
or partially encum-
bered certificate
be memorandum
upon, or may
portion of land
benefit of title or
part thereof, or
to such owner or
part thereof, of
of the partially
land retained

The owner shall execute a lease in the form H in this schedule to this Act, and every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of title of the land, or shall give such other description as is necessary to identify such land, and a right for the lessee to purchase the land therein described may be stipulated in such instrument; and in case the lessee pays the purchase money stipulated, and otherwise observes his covenants expressed and implied in such instrument, the lessor shall be bound to execute a memorandum of transfer for to such lease of the said land, and to perform all necessary acts by this Act prescribed for the purpose of transferring the land to the purchaser: Provided always, that no lease of mortgaged or encumbered land shall be valid and binding against the mortgages or encumbrances unless such mortgages or encumbrances have consented to such lease prior to the same being registered, or subsequently adopts the same. 49 V. c. 26, s. 70.

Right of
purchase
by lessee

Transfer
by lessee in
such case

Proviso: as
to encum-
bered land

Vic. cap. 20,

Compare Man. Stat., sec. 87.

at the words
if practicable
the instrument

See secs. 64 *ante*; and 73-75 *post* as to entry and the surrender of lease; sec. 92 *post* as to transmission, and sec. 93 *post* as to sales under process.

See notes *re Shore v. Green*, pp. 206 and 244 *ante*.

sec. 26 of the

Compare secs. 31, 41, 59, 64 *ante*, as to necessity of registration.

FORM H

LEASE

interested in land
or encumbrance,
inferred, that is to
say, or rent charge
and at the time
of indemnity and
principal sum or
and against all
obtained or under
s. 26, s. 69.

I, A. B., being registered as owner, subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or endorsed hereon), of that piece of land (describe it), part of section , township , range containing acres, more or less (here state rights of way, privileges, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grant or certificate of title or lease, refer thereto for description and diagram, otherwise set forth the boundaries by metes and bounds) do hereby lease to E. F., of (here insert description), all the said lands, to be held by him, the said E. F., as tenant, for the space of years, from (here state the date and term), at the yearly rental of \$, payable (here insert terms of payment of rent), subject to the covenants and powers implied (also set forth any special covenants or modifications of implied covenants)

implied coven

is intended to be
for or more years.

I, E. F., of (here insert description), do hereby accept this lease of the

above described lands, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this day of

Signed by aboved-named A. B.,
as lessor, and E. F., as lessee,
this day of ,
188 , in presence of X.Y.,

(Signature of Lessor.)

(Signature of Lessee.)

(Here insert memorandum of mortgages and encumbrances.)

49 Vic. cap. 26, sch. form H. See secs. 71, 72 and 74 *post* as to implied covenants, and sec. 121 *post* as to modifications, etc.

Compare Sch. E, sec. 87 Man Stat. and notes pp. 138, 206 and 244 *ante*.

Implied
covenants
by lessee.

71. In every memorandum of lease, unless a contrary intention appears therein, there shall be implied the following covenants by the lessee, that is to say :—

Rent and
taxes.

(a) That he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property during the continuance of the lease ;

To repair.

(b) That he will, at all times during the continuance of the said lease, keep and, at the termination thereof, yield up the demised property in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest or other casualty, and reasonable wear and tear excepted. 49 V., c. 26, s. 71.

Man. Stat., sec. 88. See note last section.

The words are "or other casualty" do not appear in the Manitoba or Victorian Statutes, and it is not clear how casualties are to be distinguished from accidents.

In South Australia the Supreme Court held that a right of re-entry did not arise in consequence of a breach of a covenant not to sublet, as this is not a covenant in respect of which default could be continued : *Saunders v. Wadham*, 4 S. A. L. R. 73. See note to Form I *post*.

Powers of
lessor.

72. In every memorandum of lease, unless a different intention appears therein, there shall also be implied the following powers in the lessor, that is to say :—

(a) That he may by himself or his agents, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode, or upon the demised premises, a notice in writing of any defect, requiring him within a reasonable time, to be therein mentioned, to repair the same, in so far as the tenant is bound to do so;

(b) That in case the rent or any part thereof is in arrear for the space of two calendar months, or in case default is made in the fulfilment of any covenant, whether expressed or implied in such lease, on the part of the lessee, and is continued for the space of two calendar months, or in case the repairs required by such notice as aforesaid, are not completed within the time therein specified, such lessor may enter upon and take possession of such demised premises. 49 V., c. 26, s. 72.

Compare Man. Stat., sec. 89.

73. In any such case the registrar, upon proof to his satisfaction of recovery of possession by a lessor, or as transferee by a legal proceeding, shall make an entry of the same in the register, and the estate of the lessee in such land shall thereupon determine, but without releasing the lessee from his liability in respect of the breach of any covenant in such lease expressed or implied; and the registrar shall cancel such lease, if delivered up to him for that purpose. 49 V., c. 26, s. 73.

Man. Stat., sec. 90.

74. Whenever, in any lease or mortgage made under this Act, the forms of words in column one of the Form I in the said schedule to this Act, and distinguished by any number therein, are used, such lease or mortgage shall be taken to have the same effect, and be construed as if there had been inserted therein the form of words contained in column two of the said form and distinguished by the same number; and every such form shall be deemed a covenant by the covenantor with the covenantee and his transferees, binding the former and his heirs, executors, administrators and transferees; but it shall not be necessary in any such lease to insert any such number; and there may be introduced into or annexed to any of the forms in the first column any expressed exceptions from the same or expressed qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in corresponding forms in the second column. 49 V., c. 26, s. 74.

Observe the use of the word *heirs* in both Acts, and compare sec. 6 and notes *ante* and notes p. 72 *ante*; also Forms H and I and sec. 71.

Man. Stat., secs. 91 and 144.

Although the covenants given in Form I are referred to as permissible in mortgages, it will be seen that they are construed in the second column in a manner only applicable to leases. The heading of the form contains the word "IMPLIED," and is misleading.

FORM I.

STATUTORY COVENANTS IMPLIED IN LEASE OR MORTGAGE.

*Column one.**Column two.*

Statutory
short cove-
nants.

1. Will not, without leave, assign
or sublet.

1. The covenantor, his executors, administrators, or transferees, will not, during the said term, transfer, assign, or sublet the premises hereby leased, or any part thereof, or otherwise by any act or deed procure the said premises, or any part thereof, to be transferred or sublet, without the consent in writing of the lessor or his transferees first had and obtained.

2. Will fence.

2. The covenantor, his executors, administrators, or transferees, will, during the continuance of the said term, erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.

3. Will cultivate.

3. The covenantor, his executors, administrators, or transferees, will, at all times during the said term, cultivate, use and manage in a proper husbandlike manner all such parts of the land as are now or shall hereafter, with the consent in writing of the said lessor or his transferees, be broken up or converted into tillage, and will not impoverish or waste the same.

4. Will not cut timber.

4. The covenantor, his executors, administrators, or transferees, will not cut down, fell, injure or destroy

are referred to
that they are
ner only appli-
contains the word

MORTGAGE.

in two.

or, his executors,
transferees, will
id term, transfer,
e premises hereby
thereof, or other-
r deed procure the
ny part thereof, to
sublet, without the
of the lessor or his
d and obtained.

or, his executors,
transferees, will,
uance of the said
it upon the bound-
land, or on those
ch no substantial
good and substan-

or, his executors,
transferees, will,
g the said term,
manage in a proper
r all such parts of
ow or shall here-
sent in writing of
his transferees, be
erted into tillage,
erish or waste the

or, his executors,
transferees, will
injure or destroy

any living timber or timber-like tree
standing and being upon the said
land, without the consent in writing
of the said lessor or his transferees.

5. Will not carry on offensive
trade.

5. The covenantor, his executors,
administrators or transferees will not,
at any time during the said term, use,
exercise, or carry on, or permit or
suffer to be used, exercised or carried
on, in or upon the said premises, or
any part thereof any noxious, noisome
or offensive art, trade, business, occu-
pation or calling; and no act, matter
or thing whatsoever shall, at any time
during the said term, be done in or
upon the said premises, or any part
thereof, which shall or may be or grow
to the annoyance, nuisance, grievance,
damage or any disturbance of the
occupiers or owners of the adjoining
lands and properties.

49 Vic. cap. 26, sch. form I.

Compare Man. Stat. Sch. N, sec. 91 and notes page 141
ante.

These covenants are also made binding on the *heirs* (see
note to sec. 74), but it is not clear that they could be com-
pelled to their performance, *vide* sec. 6 *ante*.

An injunction issued in Victoria restraining a lessee
from committing a breach of an implied covenant: *Mundy*
v. Prowse, 4 V. L. R. (E.) 101. See notes to sec. 71 *ante*.

75. Whenever any lease or demise which is required to be registered
by this Act is intended to be surrendered, and the surrender thereof is
effected otherwise than through the operation of a surrender in law,
there shall be indorsed upon such lease or counterpart thereof the word
"surrendered," with the date of such surrender, and such indorsement
shall be signed by the lessee and the lessor as evidence of the acceptance
thereof, and shall be attested by a witness; and the registrar shall there-
upon enter in the register a memorial recording the date of such surren-
der, and shall likewise indorse upon the lease a memorandum recording
the fact of such entry having been so made in the register; and upon

Surrender
of lease by
lessee.

Memoran-
dum of
surrender.

Proviso.
Consent of
mortgagee.

such entry having been so made, the estate or interest of the lessee in such land shall vest in the lessor or in the person in whom, having regard to intervening circumstances, if any, the said land would have vested if no such lease had ever been executed; and production of such lease or counterpart bearing such indorsed memorandum shall be sufficient evidence that such lease has been so surrendered: Provided, that no lease subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee. 49 V., c. 26, s. 75.

See sec. 70 *ante*; leases for less than three years need not be in Form H and under sec. 61 *ante* would be implied encumbrances although not registered.

Any estate or interest in land may be the subject of a mortgage or encumbrance. *Vide* sec. 76 *post*.

Compare Man. Stat., secs. 92, 93 and 94.

MORTGAGES AND ENCUMBRANCES.

Mortgages
and encum-
brances.

76. Whenever any land or estate, or interest in land, subject to the provisions of this Act, is intended to be charged or made security in favor of any mortgagee, the mortgagor shall execute a memorandum of mortgage in the form J in the schedule to this Act, or to the like effect; and whenever any such land is intended to be charged with or made security for the payment of an annuity, rent charge, or sum of money, in favor of any encumbrancee, the encumbrancer shall execute a memorandum of encumbrance in the form K in the schedule to this Act, or to the like effect; and every such instrument shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and shall, for description of the land intended to be dealt with, refer to the certificate of title on which such estate or interest is held, or shall give such other description as is necessary to identify such land, together with all mortgages or encumbrances affecting the same, if any. 49 V., c. 26, s. 76.

Estate or
interest
affected
must be
stated.

Compare secs. 34, 41, 59, 64, *ante*, as to necessity of registration.

Man. Stat., secs. 80, 91 and 96, and notes pages 144 and 145 *ante*.

FORM J.

MEMORANDUM OF MORTGAGE.

Form J.

I, A. B., being registered as owner of an estate (*here state nature of interest*), subject, however, to such encumbrances, liens and interests as

are notified by memorandum underwritten (or indorsed hereon), of that piece of land, (*description*), part of section , township , range , containing acres, be the same more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed (a) along with the land, and if the land dealt with contains all included in the original grants, refer thereto for description of parcels and diagrams; otherwise set forth the boundaries and accompany the description by a diagram*), in consideration of the sum of \$ lent to me by E. F., of (*here insert description*), the receipt of which sum I do hereby acknowledge, covenant with the said E. F.,—

Firstly. That I will pay to him, the said E. F., the above sum of \$, on the day of .

Secondly. That I will pay interest on the said sum at the rate of on the \$, in the year, by equal payments on the day of , and on the day of , in every year.

Thirdly. (*Here set forth special covenants, if any.*)

And for the better securing of the said E. F. the repayment, in manner aforesaid, of the principal sum and interest, I hereby mortgage to the said E. F. my estate and interest in the land above described.

In witness whereof, I have hereunto signed my name this day of 18 .

Signed by the above named A. B. }
as mortgagor this }
day of , in presence of } (*Signature of Mortgagor.*)
G. H. }

(*Insert memorandum of mortgages and encumbrances.*)

For form of transfer of mortgage, see Form L.

49 Vic. cap. 26, sch. form J. See Man. Stat. Sch. C, page 145 *ante*.

(a) *Quære* "charged."

FORM K.

MEMORANDUM OF ENCUMBRANCE.

I, A. B., being registered as owner of an estate (*state nature of estate*). Form K. subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or indorsed hereon), of that piece of land of (*description*) part of section , township , range containing acres, more or less (*here state rights of way, privileges, easements, if any, intended to be conveyed (a) along with the land, and if the land dealt with contains all included in the original grant or certificate of title, refer thereto for description of parcels and diagrams, otherwise set*

st of the lessee in
nom, having regard
uld have vested if
on of such lease or
shall be sufficient
vided, that no lease
dered without the
26, s. 75.

three years need
ould be implied

the subject of a
ost.

land, subject to the
or made security in
e a memorandum of
or to the like effect;
arged with or made
or sum of money, in
l execute a memor-
le to this Act, or to
contain an accurate
ortgaged or encum-
d to be dealt with,
interest is held, or
identify such land,
g the same, if any.

to necessity of

s pages 144 and

here state nature of
is and interests as

forth the boundaries and accompany the description by a diagram), and desiring to render the said land available for the purpose of securing to and for the benefit of C. D., of (description) the (sum of money, annuity or rent charge) hereinafter mentioned: do hereby encumber the said land for the benefit of the said C. D., with the (sum, annuity or rent charge) of

, to be paid at the times and in the manner following, that is to say: (here state the times appointed for the payment of the sum, annuity or rent charge intended to be secured, the interest, if any, and the events on which such sum, annuity or rent charge shall become and cease to be payable, also any special covenants or powers, and any modification of the powers or remedies given to an encumbrance by this Act): And, subject as aforesaid, the said C. D. shall be entitled to all powers and remedies given to an encumbrance by "The Territories Real Property Act."

In witness whereof I have hereunto
signed my name this
day of _____, in presence
of _____

(Signature of Encumbrancer.)

(Insert memorandum of mortgages and encumbrances.)

49 Vic. cap. 26, sch. form K. See Man. Stat. Sch. D, page 146 *ante*.

(a) *Quære*, "charged."

Mortgage,
etc., not to
transfer
estate.

Powers on
default by
mortgagor.

Notice.

Power of
sale.

77. Mortgage and encumbrance under this Act shall have effect as security, but shall not operate as a transfer of the land thereby charged; and if default is made in payment of the principal sum, interest, annuity or rent charge, or any part thereof thereby secured, or in the observance of any covenant expressed in any memorandum of mortgage or encumbrance registered under this Act, or that is herein declared to be implied in such instrument, and such default is continued for the space of one calendar month, or for such longer period of time as is expressly limited for that purpose in such instrument, the mortgagee or encumbrancee may give to the mortgagor or encumbrancer notice in writing to pay, within a time to be specified in such notice, the money then due or owing on such mortgage or encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that all competent rights and powers will be resorted to unless such default is remedied,—or where the mortgagor or encumbrancer cannot be found, may give such notice in that behalf to the mortgagor or encumbrancer in such manner as the judge, on summary application *ex parte*, directs. 49 V., c. 26, s. 77.

Compare Man. Stat., secs. 97, 103 and *proviso* 106.

78. After such default in payment or in the observance of covenants continuing for the further space of one calendar month from the service

of such notice, or for such period as to the judge seems meet, such mortgagee or encumbrancee is hereby authorized and empowered to sell the land so mortgaged or encumbered, or any part thereof, and all the estate or interest therein of the mortgagor or encumbrancer, and, either altogether or in lots, by public auction or by private contract, or by both such modes of sale, and subject to such conditions as he thinks fit, and to buy in and re-sell the same, without being liable for any losses occasioned thereby, and to make and execute all such instruments as are necessary for effecting the sale thereof; and all such sales, contracts, matters and things hereby authorized shall be as valid and effectual as if the mortgagor or encumbrancer had made, done or executed the same; and the receipt or receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of such land, estate, or interest, or of any portion thereof, for so much of his purchase-money as is thereby expressed to be received; and no such purchaser shall be answerable for the loss, misapplication or non-application, or be obliged to see to the application of the purchase-money by him paid, nor shall he be concerned to inquire as to the fact of any default having been made or notice having been given as aforesaid; and the purchase-money to arise from the sale of any such land, estate, or interest shall be applied: first, in payment of the expenses occasioned by such sale; secondly, in payment of the moneys which are then due or owing to the mortgagee or encumbrancee; thirdly, in payment of subsequent mortgages or encumbrances, if any, in the order of their priority; and the surplus, if any shall be paid to the mortgagor or encumbrancer, as the case may be. 49 V., c. 26, s. 78.

Compare Man. Stat., secs. 104 and 106.

As to priority see secs. 39, 41, 60 and 64 *ante*.

79. Upon the registration of any memorandum or instrument of transfer executed by a mortgagee or encumbrancee, for the purpose of such sale as aforesaid, the estate or interest of the mortgagor or encumbrancer therein described as conveyed, shall pass to and vest in the purchaser, freed and discharged from all liability on account of such mortgage or encumbrance or of any mortgage or encumbrance registered subsequent thereto; and the purchaser shall be entitled to receive a certificate for the same. 49 V., c. 26, s. 79.

Compare secs. 34, 41, 59, 64, *ante*, as to necessity of registration.

Man. Stat. 105, and Rule 17, Sch. S, sec. 26.

80. When default for six calendar months has been made in the payment of the interest or principal sum secured by memorandum of mortgage.

Mortgagee may have order of foreclosure.

Foreclosure procedure.

Certificate and proofs required.

gage, a registered mortgagee may make application in writing to the judge for an order for foreclosure; and such application shall state that such default has been made as aforesaid—and that the land, estate or interest mortgaged has been offered for sale at public auction after proper notice given to the mortgagor, as in this Act provided, and that the amount of the highest bid at such sale was not sufficient to satisfy the money secured by such mortgage, together with the expenses occasioned by such sale, and that notice in writing of the intention of such mortgagee to make such application has been given to the mortgagor, either personally or by leaving the same with an adult at his usual or last known place of abode; and such application shall be accompanied by a certificate of the licensed auctioneer by whom such land was put up for sale, and by such other proof of the matter stated by the application as the judge requires; and the statements made in such application shall be verified by the oath of the applicant. 49 V., c. 26, s. 80.

Compare Man. Stat., sec. 106.

Notice by judge offering land for sale.

Order for foreclosure.

Entry of foreclosure.

81. Upon receiving such application the judge shall cause notice to be published once in each of three successive weeks in a newspaper likely to give the best notice, offering such land for sale,—and shall, in such case, limit and appoint a time, not less than one month from the date of the last advertisement of such notice in such paper, upon or after which the judge may issue to such applicant an order for foreclosure, unless, in the interval, a sufficient amount has been realized by the sale of such land to satisfy the principal and interest moneys due and all expenses occasioned by such sale and proceedings; and every such order for foreclosure, under the hand of the judge and entered in the register, shall have the effect of vesting in the mortgagee all the estate and interest of the mortgagor in the land mentioned in such order, free from all right and equity of redemption on the part of the mortgagor or of any person claiming through or under him. 49 V., c. 26, s. 81.

Compare Man. Stat., secs. 107 and 108.

Registration of discharge.

Entry of discharge

82. Upon the production of any memorandum of mortgage or encumbrance, having indorsed thereon or attached thereto a receipt or acknowledgment signed by the mortgagee or encumbrancee, and proved by the affidavit of an attesting witness, discharging the land specified or any part of the land comprised in such instrument, from the whole or any part of the principal sum or annuity secured thereby, or upon proof being made to the satisfaction of a judge of the payment of all moneys due on any mortgage or encumbrance and the production to the registrar of a certificate signed by the judge to that effect, the registrar shall thereupon make an entry in the register, noting that such mortgage or encumbrance is discharged, wholly or partially, or that part of the land

is discharged as aforesaid, as the case requires; and upon such entry being so made, the land, or the estate or interest in the land, or the portion of the land mentioned or referred to in such indorsement as aforesaid, shall cease to be subject to or liable for such principal sum or annuity, or, as the case may be, for the part thereof noted in such entry as discharged.

49 Vic. cap. 26, sec. 82, as amended by 51 Vic. cap. 20, sec. 15.

Compare sec. 100 of the Manitoba Statute, and notes to sec. 74, p. 121 *ante*.

S3. Upon proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any memorandum of encumbrance, the annuity or sum of money thereby secured ceases to be payable, and upon proof that all arrears of the said annuity and interest or money have been paid, satisfied or discharged, the registrar shall, upon the order of the judge, make an entry in the register book, noting that such annuity or sum of money is satisfied and discharged, and shall cancel such instrument; and upon such entry being made, the land shall cease to be subject to or liable for such annuity or sum of money, and the registrar shall, in any or either such case as aforesaid, indorse on the grant, certificate of title, or other instrument evidencing the title of the mortgagor or encumbrancer to the land mortgaged or encumbered, a memorandum of the date on which such entry as aforesaid was made by him in the register book, whenever such grant, certificate of title or other instrument is presented to him for that purpose. 49 V., c. 26, s. 83.

Man. Stat., sec. 102.

S4. If any mortgagor becomes entitled to pay off the mortgage money, and the registered mortgagee is absent from the Territories and there is no person authorized by registered power of attorney to give a receipt to the mortgagor for the mortgage money after the date appointed for the redemption of any mortgage, the judge, on application to him and proof of the facts and of the amount due for principal and interest upon such mortgage, may direct the payment into a chartered bank having a branch or agency in the district, or if not in the district, in the Territories, of such mortgage money, with all arrears of interest due thereon to the credit of the mortgagee or other person entitled thereto; and upon the interest upon such mortgage shall cease to run or accrue.

2. The registrar shall, upon presentation of the judge's order and of the receipt of the manager or agent of such bank for the amount of the said mortgage money and interest, make an entry in the register dis-

MAN. L.A.

charging such mortgage, stating the day, hour and minute on which such entry is made :

Entry to
be valid
discharge.

3. Such entry shall be a valid discharge of such mortgage and shall have the same force and effect as is hereinbefore given to a like entry when made upon production of the memorandum of mortgage with the receipt of the mortgagee :

See sec. 82 *ante*.

Notice to
mortgagee.

4. The registrar shall, when such order and receipt are presented to him, send a notice of the fact to the mortgagee by letter addressed by mail to his last known place of abode :

As to filing of post office address, see sec. 56 *ante*.

Indorse-
ment on
certificate
of title.

5. The registrar shall indorse on the certificate of title, or other instrument as aforesaid, and also on the memorandum of mortgage, whenever those instruments are brought to him for that purpose, the several particulars hereinbefore directed to be indorsed upon each of such instruments respectively :

Estoppel.

6. After payment as aforesaid of any mortgage money and interest, the mortgagee entitled thereto shall not recover any further sum in respect of such mortgage than the amount so paid. 49 V., c. 26, s. 84.

Compare Man. Stat., sec. 101.

Transfer of
mortgages,
etc.

85. Mortgages, encumbrances and leases may be transferred by a transfer executed in the form L in the schedule to this Act, and the transfer shall be registered in the manner hereinbefore set forth ; and transferees shall have priority according to the date and time of registration :

Transfer of
part of sum
secured by
mortgage.

2. Any mortgagee may transfer a part of the sum secured by the mortgage by a transfer executed in the form M in the schedule to this Act, and the part so transferred shall continue to be secured by the mortgage, and may be given priority over the remaining part, or may be deferred, or may continue to rank equally with it under the security of the original mortgage, as stated in the instrument of transfer ; and the registrar shall enter on the certificate of title a memorandum of the amount of the mortgage so transferred, the name of the transferee, and how the sum so transferred is to rank and shall notify the mortgagor of the facts. 49 V., c. 26, s. 85.

Man. Stat., sec. 98. Compare secs. 39, 41, 60, 64 and 78 *ante* as to priority.

FORM L.

(Indorse memorandum of transfer of mortgage or encumbrance or lease.)

TRANSFER OF MORTGAGE, ENCUMBRANCE OR LEASE BY INDORSEMENT.

I, the within mentioned C. D., in consideration of \$ Form L.
this day paid to me by X. Y., of , the receipt of
which sum I do hereby acknowledge, hereby transfer to him the mort-
gage (encumbrance or lease, as the case may be) within written, together
with all my rights, powers, title, and interest therein.

In witness whereof, I have hereunto subscribed my name this
day of , 18 .

C. D., Transferrer.

Accepted, X. Y., Transferee.

49 Vic., cap. 26, sch. form L. Compare Sch. G, Man.
Act, p. 148 ante.

FORM M.

TRANSFER OF PART OF MORTGAGE OR ENCUMBRANCE BY INDORSEMENT.

I, the within mentioned C. D., in consideration of \$ Form—
this day paid to me by X. Y., of , the receipt of Partial
which sum I do hereby acknowledge, hereby transfer to him \$ transfer.
of the mortgage (or encumbrance, as the case may be) within written,
together with all my rights, powers, title, and interest therein, and the
sum so transferred shall be preferred (or deferred or rank equally, as the
case may be) to the remaining sum secured by the mortgage.

In witness whereof, I have hereunto subscribed my name this
day of , 18 .

C. D., Transferrer.

Accepted, X. Y., Transferee.

49 Vic. cap. 26, sch. form M. Compare Sch. H, Man.
Stat., p. 149 ante.

86. Upon the registration of any transfer of any mortgage, encum- Effect of
brance or lease, the estate or interest of the transferrer, as set forth in registra-
such instrument, with all rights, powers and privileges thereto belonging tion of
or appertaining, shall pass to the transferee, and such transferee shall transfers
thereupon become subject to and liable for all and every the same require-
ments and liabilities to which he would have been subject and liable if
named in such instrument. 49 V., c. 26, s. 86.

Man. Stat., sec. 99.

87. By virtue of every such transfer the right to sue upon any mort- Rights of
gage or other instrument, and to recover any debt, sum of money, annuity transferee.

or damage thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest at the time of such transfer in any such debt, sum of money, annuity or damages, shall be transferred

Proviso: as so as to vest the same in law in the transferee thereof: Provided always, to trusts, that nothing herein contained shall prevent any court of competent jurisdiction from giving effect to any trusts affecting the said debt, sum of money, annuity or damages, in case the said transferee shall hold the same as trustee for any other person. 49 V., c. 26, s. 87.

See note to Man. Stat., sec. 99. This section corresponds with sec. 89 of the Man. R. P. Act 1885.

Implied covenant by mortgagor in possession.

88. In every memorandum of mortgage there shall be implied against the mortgagor remaining in possession, a covenant that he will repair and keep in repair all buildings or other improvements erected and made upon the land, and that the mortgagee may, at all convenient times, until such mortgage is redeemed, be at liberty, with or without surveyors or others, to enter into or upon such land to view and inspect the state of repair of such buildings or improvements. 49 V., c. 26, s. 88.

Compare R. P. Act (Man.) 1885, sec. 90; see note, p. 132 *ante*.

POWERS OF ATTORNEY.

Powers of attorney.

89. The registered proprietor of any land, estate or interest, may authorize and appoint any person to act for him or on his behalf in respect of the transfer or other dealing with such land, estate, or interest in accordance with the provisions of this Act, by executing a power of attorney in any form heretofore in use for the like purpose, or in the form N in the schedule to this Act, or as near thereto as circumstances permit, and a duplicate or attested copy thereof shall be deposited with the registrar, who shall enter in the register a memorandum of the particulars therein contained and the date, hour and minute it is deposited with him; and until such power of attorney is revoked in the manner provided by the next following section, the right of the registered owner to effect a transfer or to otherwise deal with such land, estate or interest shall be suspended. 49 V., c. 26, s. 89.

Registration.

Power of owner suspended until revocation.

Compare Man. Stat., secs. 41, 110, 111, 112.

Compare secs. 34, 41, 59, 64, *ante*, as to necessity of registration.

FORM N.

POWER OF ATTORNEY.

Form N.

I, A. B., being registered as owner of an estate (*here state the nature of the estate or interest*), subject, however, to such encumbrances, liens and

interests as are notified by memorandum underwritten (or endorsed hereon), in (here refer to schedule for description and contents of the several parcels of land intended to be affected, which schedule must contain reference to the existing certificate of title or lease of each parcel) do hereby appoint C. D. attorney on my behalf to (here state the nature and extent of the powers intended to be conferred, as to sell, lease, mortgage, etc.) the lands in the said schedule described, and to execute all such instruments, and do all such acts, matters and things as may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due, or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage or trespass.

In witness whereof, I have hereunto subscribed my name this day of , 18 .

Signed by the above named A. B. this)

day of

(Signature.)

in the presence of X. Y.)

49 V., c. 26, sch. form N. Man. Stat. Schs. K and L, pp. 164 and 165 *ante*.

As to sealing see notes, p. 167 *ante*.

90. Any such power of attorney may be revoked by a revocation order in the form O in the schedule to this Act; and after the registration of any revocation of a power the registrar shall not give effect to any transfer or other instrument signed pursuant to such power, unless under any registration abstract outstanding at the time. 49 V., c. 26, s. 90.

Man. Stat., sec. 112.

FORM O.

REVOCATION OF POWER OF ATTORNEY.

I, A. B., of , hereby revoke the power of attorney given by me to , dated the day of .

In witness whereof, I have hereunto subscribed my name this day of , 18 .

(Signature of Constituent.)

49 V., c. 26, sch. form O.

Compare Man. Stat., Sch. M., p. 167 *ante*.

TRANSMISSION.

- Land of deceased owner.** **Personal representative to be registered as owner.** **Memorial.** **Estate passes upon registration.** **Title to relate back to death.** **Certificate to be cancelled.**
- 91.** Whenever the owner of any land dies, such land shall, subject to the provisions of this Act, vest in the personal representative of the deceased owner, who shall, before dealing with such lands, make application in writing to the registrar to be registered as owner, and shall produce to the registrar the probate of the will of the deceased owner, or letters of administration, or the order of the court authorizing him to administer the estate of the deceased owner, or an office copy of the said probate, letters of administration or order, as the case may be; and thereupon the registrar shall enter in the register a memorial of the date of the will and of the probate or of the letters of administration or order of the court as aforesaid, the date, hour and minute of the production of the same to him, the date of the death of such owner, when the same can be ascertained, with such other particulars as he deems necessary:
2. Upon such entry being made, the executor or administrator, as the case may be, shall be deemed to be the owner of such lands; and the registrar shall note the fact of such registration by memorandum under his hand on the probate of the will, letters of administration, order or other instrument as aforesaid:
3. The title of the executor or administrator to such land shall relate back and take effect as from the date of the death of the deceased owner:
4. The duplicate certificate of title granted to the deceased owner shall be delivered up to be cancelled or proved to have been lost, and the registrar shall issue to the executor or administrator a fresh certificate of title, stating therein the fact that the new registered owner is the executor or administrator. 49 V., c. 26, s. 91.

Man. Stat., sec. 113.

As to effect of registration compare secs. 59 and 64 *ante*.

- Mortgage, etc., transmitted by will or intestacy.** **Registration of personal representative.**
- 92.** Whenever any mortgage, encumbrance or lease affecting land registered under this Act is transmitted in consequence of the will or intestacy of the owner thereof, the probate of the will of the deceased owner, or letters of administration, or the order of the court authorizing a person as aforesaid to administer the estate of the deceased owner, accompanied by an application in writing from the executor or administrator, or such other person as aforesaid, claiming to be registered as owner in respect of such estate or interest, shall be produced to the registrar, who shall thereupon enter in the register and on the instrument evidencing title to the mortgage, encumbrance or lease transmitted, when the same can be produced, the date of the will and of the probate, or of the letters of administration, or order of the court as aforesaid, the date, hour and minute of the production of the same to him, the date of

the death of such owner, when the same can be ascertained, with such other particulars as he deems necessary :

2. Upon such entry being made, the executor or administrator, or such other person, as the case may be, shall be deemed to be the owner of such mortgage, encumbrance or lease, and the registrar shall note the fact of such registration by memorandum under his hand on the letters of administration, probate or order as aforesaid. 49 V., c. 26, s. 92.

Man. Stat., secs. 114, 115, 116.

93. Any person registered in place of a deceased owner, shall hold the land in respect of which he is registered upon the trusts and for the purposes to which the same is applicable by this Act or by law, and subject to any trusts and equities upon which the deceased owner held the same, but, for the purpose of any registered dealings with such land, he shall be deemed to be the absolute owner thereof :

2. Any person beneficially interested in any such land's or any estate or interest therein, may apply to a court or judge having jurisdiction, to have the same taken out of the hands of the trustee having charge by law of such property, and transferred to some other person or persons ; and the court or judge, upon reasonable cause being shown, shall name some suitable person or persons as owner of the lands, or the estate or interest in question, as the case may be ; and upon the person or persons named accepting the ownership and giving approved security for the due fulfilment of the trusts, the court or judge may order the registrar to cancel the certificate to the trustee, and to grant a new certificate to the person or persons so named :

3. The registrar, upon the production of such order, shall cancel the certificate to the trustee, and shall enter in the register a memorandum of the appointment by order of the court or judge of such person or persons as owner in trust, and a certificate of title shall be issued to him or them. 49 V., c. 26, s. 93.

Man. Stat., sec. 117.

94. Every sheriff or other officer charged with the execution thereof, shall, after the delivery to him of any writ or process affecting land, or lien, mortgage or encumbrance, or other interest therein, deliver a copy of every such writ or process so in his hands or that may thereafter be delivered to him, certified under his hand, together with a memorandum in writing of the lands intended to be charged thereby to the registrar within whose district such lands are situate, and no land shall be bound by any such writ or other process, until such copy and memorandum have been so delivered ; and the registrar shall thereupon, if the title has been registered, or so soon as the title has been registered under the pro-

Effect
of registra-
tion.

Lands of
subject to
trusts.

Beneficial
interests
may be
dealt with
by the
Court or
Judge.

Certificate
to be can-
celled and
new one
granted.

Process
against
land to be
filed by
sheriff.

Entry by
registrar.



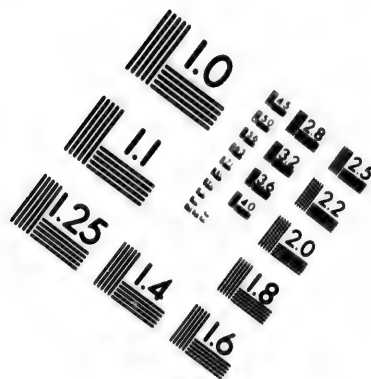
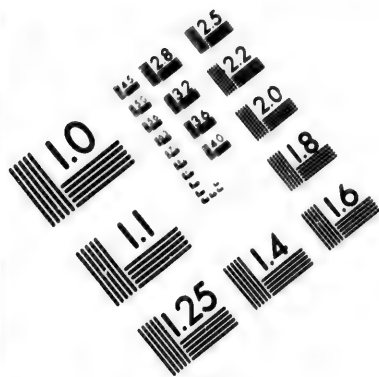
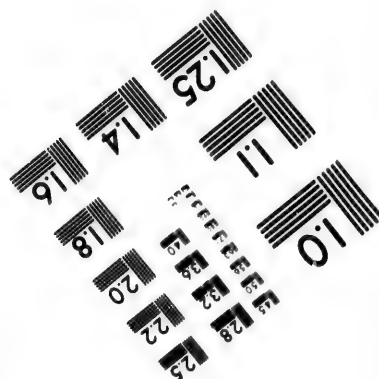
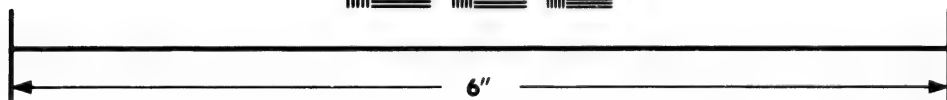
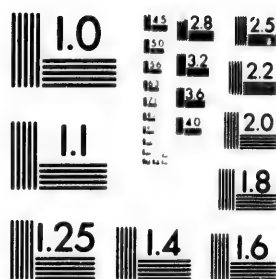


IMAGE EVALUATION TEST TARGET (MT-3)



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WEBSTER, N.Y. 14580
(716) 872-4503**

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Effect of
entry.

visions of this Act, enter a memorandum thereof in the register; and from and after the delivery of a copy of any such writ or other process and memorandum to the registrar, the same shall operate as a caveat against the transfer by the owner of the land mentioned in such memorandum, or of any interest he has therein; and no transfer shall be made by him of such land or interest therein except subject to such writ or other process.

49 Vic. cap. 26, sec. 94, as amended by 51 Vic. cap. 20, sec. 16. Compare R. P. Act (Man.) 1885, sec. 102, *et seq.*, and note (4), p. 105 *ante*.

Such registered writs are implied as liens under sec. 61 *ante*. See notes to sec. 64 *ante*.

Compare secs. 34, 41, 59, 64, *ante*, as to necessity of registration.

The former section was as follows:—

Repealed
section.

Every sheriff or other officer charged with the execution thereof, shall, after the delivery to him of any writ or other process affecting land, or lien, mortgage or encumbrance, or other interest therein, deliver a copy of every such writ or process so in his hands or that may thereafter be delivered to him, certified under his hand, together with a memorandum in writing of the lands intended to be charged thereby, to the registrar within whose district such lands are situate; and no land shall be bound by any such writ or other process, until such copy and memorandum have been so delivered; and from and after the delivery of a copy of any such writ or other process and memorandum to the registrar, the same shall operate as a caveat against the transfer by the owner of the land mentioned in such memorandum, or of any interest he has therein; and no transfer shall be made by him of such land or interest therein except subject to such writ or other process.

Satisfac-
tion of
writs.

95. Upon production and delivery to the registrar of a certificate by the sheriff (under his seal of office) or other officer, of the satisfaction of or withdrawal from his hands of any such writ or process as aforesaid, he shall enter a memorandum to that effect on the register, and from thenceforth such writ or process shall be deemed to be satisfied. 49 V. c. 26, s. 95.

As to Man. Stat. see note to sec. 94 *supra*.

Sheriff's
sale to re-
quire con-
firmation
by a judge.

96. No sale by a sheriff or other officer as aforesaid, under process of law, of any land, shall be of any effect until the same has been confirmed by a judge; and upon the production to the registrar of a duly executed

transfer of any land so sold, if an order of confirmation of such sale is indorsed on such transfer, the purchaser at such sale shall be entitled to be registered as the owner of the interest purchased by him at such sale, and to a certificate of title to the same. 49 V., c. 26, s. 96.

As to Man. Stat. see note to sec. 94 *supra*.

97. The application for the confirmation of a sale made under any process of law, may be made by the sheriff or other officer making such sale, or by any person interested in such sale, on notice to the owner, unless the judge to whom such application is made, dispenses with such notice; and if the sale is confirmed the costs of confirmation shall be borne and paid out of the purchase-money, or as the judge directs; but in case such sale is not confirmed, the purchase-money paid by him shall be refunded to the purchaser; and the judge may make such order as to the costs of all parties to the sale and of the application for its confirmation as he thinks just. 49 V., c. 26, s. 97.

As to Man. Stat. see note to sec. 94 *supra*.

98. When any land is sold under process of law, the registrar shall, upon the production to him of the transfer of the same in the form P in the schedule to this Act, with proof of the due execution thereof, and the order of confirmation of such sale, cause a notice to be mailed to the proper post office address of the person whose interest in such land has been sold,—and after the expiration of four weeks from the mailing of such notice shall register the purchaser as the owner of the interest in the said land so sold, and shall issue to him a certificate in the prescribed form and do all other things necessary for the registration of the vendee as registered owner of the interest in the land purchased by him, unless such registration is in the meantime stayed by the order of some court or judge having jurisdiction,—and in such case the registration shall not be made nor the certificate issued, except according to the order and direction of such court or judge. 49 V., c. 26, s. 98.

As to Man. Stat. see note to sec. 94 *supra*.

FORM P 1.

TRANSFER OF LAND UNDER PROCESS OF LAW.

I, _____, of _____, the Sheriff, etc., deeds.
 person appointed to execute the process hereinafter mentioned, in pursu-
 ance of a writ dated the _____ day of _____,
 one thousand eight hundred and _____, and issued out of (insert
name of court), a court of competent jurisdiction, in an action wherein
 _____ is the plaintiff, and _____ the

defendant, which said
is registered as the owner of the land hereinafter described, subject to the
mortgages and encumbrances notified hereunder, do hereby, in considera-
tion of the sum of _____ paid to me, as _____ aforesaid,
by E. F. (insert addition) TRANSFER to the said E. F. all that piece of land
(here insert a sufficient description of the land, and refer to the debtor's certifi-
cate of title or grant).

Dated the _____ day of _____ one thousand
eight hundred and _____

(Signature of Officer.)

Mortgages and encumbrances referred to. (State them.)

49 Vic. cap. 26, sch. form P 1. Seals are not shewn as
necessary in this or any of the three following forms.

FORM P 2.

TRANSFER OF LEASE, MORTGAGE, OR ENCUMBRANCE UNDER PROCESS OF LAW.

Form P 2. I, _____, of _____, the person appointed to
execute the writ hereinafter mentioned (or otherwise, as the case may be),
in pursuance of a writ of *fiery facias*, tested the _____ day of
_____ one thousand eight hundred and _____, and issued out
of (insert name of court) a court of competent jurisdiction, in an action
wherein _____ is the plaintiff and _____ the defendant,
which said _____ is registered as the owner of a lease (mortgage
or encumbrance, as the case may be) numbered _____ of (or upon)
the land hereinafter described, subject to the mortgages or encumbrances
notified hereunder, do hereby, in consideration of the sum of _____
paid to me as _____ aforesaid, by E. F. (insert addition) TRANSFER
to the said E. F. the lease (mortgage or encumbrance) granted by
_____ to and in favor
of _____, dated the _____ day of _____,
to, in and over (here describe the land according to the description in the
lease, mortgage or encumbrance, and refer to the registered instrument).

Dated the _____ day of _____, one thousand eight
hundred and _____

(Signature of Officer.)

Mortgages and encumbrances referred to. (State them.)

49 Vic. cap. 26, sch. form P 2.

FORM P 3.

TRANSFER OF LAND UNDER DECREE OR ORDER OF A COURT OF COMPETENT JURISDICTION.

I (insert name), in pursuance of a decree (or order) of (insert name of Form P 3. court), a court of competent jurisdiction, dated the day of one thousand eight hundred and , and entered in the register, vol. , fol. , hereby TRANSFER to E. F. (insert addition), subject to the mortgages and encumbrances notified hereunder, all that piece of land being (here insert a sufficient description of the land and refer to the certificate of title or grant).

Dated the day of , one thousand eight hundred and

(Signature of Transferrer.)

Mortgages and encumbrances referred to. (State them.)

49 Vic. cap. 26, sch. form P 3.

FORM P 4.

TRANSFER OF LEASE, MORTGAGE OR ENCUMBRANCE, UNDER DECREE OR ORDER OF A COURT OF COMPETENT JURISDICTION.

I (insert name), in pursuance of a decree or order of (insert name of Form P 4. court), a court of competent jurisdiction, dated the day of , one thousand eight hundred and , and entered in the register, vol. , fol. , hereby TRANSFER to E. F. (insert addition), subject to the mortgages and encumbrances notified hereunder, the lease (or mortgage or encumbrance, as the case may be) granted by in favor of

(of or upon) all that piece of land (here insert description of the land according to the description in the lease, mortgage or encumbrance, and refer to the registered instrument.)

Dated the day of , one thousand eight hundred and

(Signature of Transferrer.)

Mortgages and encumbrances referred to. (State them.)

49 Vic., cap. 24, sch. form P 4.

99. The registrar, upon the production of the register or other sufficient proof of the marriage of a female owner of any land, estate or interest, accompanied by a statement in writing, signed by her, shall enter on the register and also upon the certificate of title or other instrument evidencing the title of such female owner, when produced to him for that purpose, Marriage of female owner to be entered by registrar.

Issue of
new certifi-
cate.

the name and description of her husband, the date of the marriage and where solemnized, and the date, hour and minute of the production to him of the register or other sufficient evidence of such marriage; and the registrar, upon application to that effect, and surrender of the existing certificate of title, shall deliver a new certificate of title, and perform such acts as, in accordance with the provisions of this Act, are necessary for the purpose of giving effect thereto. 49 V., c. 26, s. 99.

As to Man. Stat. see note to sec. 94 *supra*.

CAVEATS.

Compare Man. Stat., sec. 130, and Rules in Sch. R, to that section.

Who may
lodge caveat.

100. Any person claiming to be interested under any will, settlement or trust deed, or any instrument of transfer or transmission, or under any unregistered instrument, or otherwise howsoever, in any land, may lodge a caveat with the registrar to the effect that no disposition of such land be made either absolutely, or in such manner and to such extent only as in such caveat is expressed, or until notice has been served on the caveator, or unless the instrument of disposition be expressed to be subject to the claim of the caveator, as claimed in such caveat, or to any lawful conditions expressed therein :

Form.

2. A caveat may be in the form Q in the schedule to this Act, and shall be verified by the oath of the caveator or his agent, and shall contain an address within the registration district at which notices may be served :

Man. Stat., sec. 130, Sch. O, and 130 (3) pp. 182 and 183 *ante* ; also sec. 130 (8) and Sch. Q, pp. 186-189 *ante* ; see also sec. 43 of Amending Act 1890 (*vide Appendix*.)

As to Oath see sec. 37 *ante*.

Notice on
receipt of
caveat.

3. Upon the receipt of a caveat, the registrar shall make a memorandum thereon of the date, hour and minute of the receipt thereof, and shall enter a memorandum thereof in the register and shall forthwith send a notice of such caveat through the post office or otherwise to the person against whose title such caveat has been lodged :

As to P. O. address see sec. 56 *ante*. Compare secs. 130 (1), p. 182 and 130 (4), p. 185 *ante*.

Effect of
caveat.

4. So long as any caveat remains in force the registrar shall not enter in the register any memorandum of transfer or other instrument pur-

porting to transfer or otherwise deal with or affect the land in respect to which such caveat is lodged :

Compare sec. 130 (1) and 130 (6) pp. 182 and 186 *ante*.

5. The owner or other person claiming the land may, by summons, call upon the caveator to attend before a court of competent jurisdiction or a judge thereof, to show cause why the said caveat should not be withdrawn ; and the said court or judge may, upon proof that such last mentioned person has been summoned, and upon such evidence as the court or judge requires, make such order in the premises either *ex parte* or otherwise as to the said court or judge seems fit :

Vide sec. 130 (2) pp. 190 and 191 *ante*. See note to following sub-division.

6. After the expiration of one month from the receipt thereof, such caveat shall lapse, unless, within that time proceedings in a court of competent jurisdiction have been taken to establish the caveator's title to the estate or interest specified in the caveat, and an injunction or order has been granted, restraining the registrar from issuing a certificate of title or otherwise dealing with the said land :

Vide sec. 130 (2), (5), (11), pp. 182, 185 and 190 *ante* ; and sec. 130 (6) p. 192 *ante*.

The exceptions as to beneficiaries made in the Manitoba Statute do not prevail in the Territories.

Schedule R of the Man. Stat. as amended by the Act of 1890, secs. 37 and 38 (*vide Appendix*) contains Rules of Practice in matters of Caveat. No rules under either secs. 132 or 138 *post* have as yet been promulgated in the Territories. Cases on practice in Manitoba are referred to on pp. 182, 187, 191, 193, 194 and 195 *ante*.

7. The caveator may, by notice in writing to the registrar, withdraw his caveat at any time ; but notwithstanding such withdrawal the court or judge may order the payment by the caveator of the costs of the caveatee incurred prior to such withdrawal :

Vide sec. 130 (9) p. 189 *ante*.

8. An entry shall be made by the registrar in the register, of the withdrawal, lapse or removal of any caveat or of any order made by the court in connection therewith ; and, after such withdrawal, lapse or removal,

it shall not be lawful for the same person or for any one on his behalf to lodge a further caveat in relation to the same matter :

Vide sec. 130 (13), (14), p. 191 *ante*

Liability
for wrong-
fully enter-
ing caveat.

9. Any person lodging or continuing any caveat wrongfully and without reasonable cause, shall be liable to make compensation to any person who has sustained damage thereby, and such compensation may be recovered by proceedings at law if the caveator has withdrawn such caveat and no proceedings have been taken by the caveatee as herein provided; but if proceedings have been taken by the caveatee, then such compensation shall be determined by the court or judge acting in the same proceedings :

Vide sec. 130 (10) p. 190 *ante*.

Judge may
prohibit
dealings, on
behalf of
infants, etc.

10. The judge, on application for that purpose, on behalf of any person who is under the disability of infancy, lunacy, unsoundness of mind or absence from the Territories, may, by order directed to the registrar, prohibit the transfer or dealing with any land belonging to any such person, and the dealing with any land in any case in which it appears to him that an error has been made by misdescription of such land or otherwise in any certificate of title or other instrument, or for the prevention of any other improper dealing. 49 V., c. 26, s. 100.

Vide sec. 68 (5) p. 112 *ante*, and sec. 130 (5), (8), (10), (12), (13), (14) and (15), pp. 182-192 *ante* ; and sub-sec. 8 *supra*. *Quære*, whether sub-sec. 8 *supra* affects the powers of a judge under the last sub-section.

FORM Q.

FORM OF CAVEAT FORBIDDING REGISTRATION OR DEALING WITH LANDS

To the Registrar of

District :

Take notice that I, A. B., of (insert description), claiming (here state the nature of the estate or interest claimed, and the grounds upon which such claim is founded) in (here describe land and refer to grant or certificate of title), forbid the registration of any memorandum of transfer or other instrument until this caveat is withdrawn by the caveator or by the order of a court of competent jurisdiction, or a judge thereof, or unless such dealing is subject to the claim of the caveator, or until after the lapse of twenty-one days from the date of the service of notice on the caveator at the following address : (Insert it.)

(Signature of Caveator or his Agent.)

Dated this day of , 18 .

I, the above named A. B. (or C. D., agent for the above A. B.) of (residence and description) make oath (or affirm, as the case may be) and say, that the allegations in the above caveat are true in substance and in fact (and if no personal knowledge, add, as I have been informed and verily believe).

Sworn, etc

(Signature.)

19 Vic., cap. 26, sch. form Q.

Compare Schedules O, P and Q Man. Stat., pp. 183-189 *ante*.

ATTESTATION OF INSTRUMENTS.

101. Powers of attorney and instruments requiring to be registered under this Act, other than grants from the Crown, orders in council, orders of a court or a judge, or certificates of any judicial proceedings, attested as such, shall be witnessed by one person who shall attest the instrument in the usual legal form of attestation; and the witness so attesting the instrument shall appear before the registrar, deputy registrar or a judge, stipendiary magistrate, or notary public or a justice of the peace in or for the Territories, and make an affidavit in the form R in the schedule to this Act. 19 Vic., c. 26, s. 101, as amended by 51 Vic., cap. 20, sec. 17.

As to oath see sec. 37 *ante*.

Compare Man. Stat., sec. 74, pp. 120-129 *ante*.

102. Instruments requiring to be registered under the provisions of this Act, executed without the limits of the Territories, other than the instruments excepted under the provisions of the next preceding section, shall be witnessed by some person who can write, and who shall make an affidavit in the form R in the schedule to this Act before one of the following persons:—

(a) If made in any Province of Canada, before a judge of any court of record, any commissioner authorized to take affidavits in such Province for use in any court of record in the Territories, or before any notary public under his official seal; or—

(b) If made in the United Kingdom, before a judge of any court of record, the mayor of any city or incorporated town under the common seal of such city or town, or a notary public under his official seal; or—

(c) If made in any British colony or possession out of Canada, before a judge of any court of record, the mayor of any city or incorporated town under the common seal of such city or town, or notary public under his official seal; or—

(d) If made in a foreign country, before the mayor of any city or town, certified under the common seal of any such city or town, or before the

British consul, vice-consul or consular agent residing therein, or before any judge of any court of record or a notary public, under his official seal. 49 Vic., c. 26, s. 102, as amended by 51 Vic., cap. 20, sec. 18.

See notes to sec. 74 of the Manitoba Statute, pp. 120-129 *ante*.

FORM R.

AFFIDAVIT OF ATTESTATION OF AN INSTRUMENT.

I, A. B., of _____, in the _____, make oath and say:

1. I was personally present and did see _____ named in the (within or annexed) instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein;

2. That the same was executed on the day of the date thereof, at the _____, in the _____, and that I am the subscribing witness thereto;

3. That I, _____, know the said
Sworn before me, at _____, in the _____
_____, this _____ day
of _____ A.D. 18 _____

Signature.

49 Vic. cap. 26, sch. form R.

Compare second form on p. 81 *ante* referred to under sec. 74 at p. 121 *ante*.

EJECTMENT—ASSURANCE FUND, ETC.

103. No action of ejectment or other action for the recovery of any land shall lie or be sustained against the registered owner, under this Act, for the estate or interest in respect to which he is so registered, except in any of the following cases, that is to say,—

- | | |
|--|---|
| <p>Mortgagor or encumbrancer or lessee in default:</p> | <p>(a) The case of a mortgagee as against a mortgagor in default;</p> <p>(b) The case of an encumbrancee as against an encumbrancer in default;</p> <p>(c) The case of a lessor as against a lessee in default;</p> |
| <p>Fraud:</p> | <p>(d) The case of a person deprived of any land by fraud as against the person registered as owner of such land through fraud, or as against a person deriving otherwise than as a transferee <i>bonâ fide</i> for value, from or through a person registered through fraud;</p> |
| <p>Misdescription:</p> | <p>(e) The case of a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of such</p> |

other land or of its boundaries, as against the registered owner of such other land ;

(f) The case of a registered owner claiming under an instrument of Double registration; title prior in date of registration under this Act, in any case in which two or more grants, or two or more certificates of title, or a grant and a certificate of title, are registered under this Act in respect to the same land :

2. In any case, other than as aforesaid, the production of the certificate of title shall be an absolute bar and estoppel to any such action against the person named in such instrument as seized of, or as registered owner or lessee of the land therein described. 49 V., c. 26, s. 103. In other cases certificate to be absolute bar to action.

Compare Man. Stat., sec. 67.

101. Any person deprived of land or of any estate of interest in land in consequence of fraud, or by the registration of any other person as owner of such land, estate, or interest, or in consequence of any fraud, error, omission or misdescription in any certificate of title or in any entry or memorial in the register, may, in any case in which such lands have been included in two or more grants from the Crown, bring and prosecute an action at law for the recovery of damages against such person as the judge appoints,—and in any other case against the person upon whose application such erroneous registration was made, or who acquired title to the estate or interest in question through such fraud, error, omission, or misdescription : Provided always, that except in the case of fraud or error occasioned by any omission, misrepresentation, or misdescription in the application of such person to be registered as owner of such land, estate or interest, or in any instrument executed by him, such person shall, upon a transfer of such land *bona fide* for value, cease to be liable for the payment of any damages which, but for such transfer, might have been recovered from him under the provisions hereinbefore contained, and such damages, with costs of action, may, in such last-mentioned case, be recovered out of the land assurance fund, by action against the registrar as nominal defendant. 49 V., c. 26, s. 101. Compensation for deprivation of land by fraud, error, etc. Action for damages under direction of a judge. Defendant not liable unless guilty of fraud, etc. Recovery from assurance fund.

Compare Man. Stat., sec. 132 ; and sec. 45 of the Act of 1890 : (*vide appendix.*)

105. Nothing in this Act contained shall be so interpreted as to leave subject to action for recovery of damages as aforesaid, or to action of ejectment, or to deprivation of the estate or interest, in respect to which he is registered as owner, any purchaser or mortgagee *bona fide* for valuable consideration of land under this Act, on the plea that his vendor or mortgagor has been registered as owner through fraud or error, or has derived from or through a person registered as owner through fraud or

Exception. error, except in the case of misdescription, as mentioned in section one hundred and three. 49 V., c. 26, s. 105.

Compare Man. Stat., sec. 133.

Assurance
fund; how
formed.

106. The land assurance fund shall be formed by the Minister of Finance and Receiver General, by deducting from the gross fees returned and paid in to him by the registrars, twenty per cent. of the fees so received for the purposes of this Act, and investing the same, together with all interest and profits accrued thereon from time to time in Canadian Government securities. 49 V., c. 26, s. 106, *part*.

Compare Man. Stat., sec. 141.

If defen-
dant dead,
action
against re-
gistrar as
nominal
defendant.

107. If the person against whom such action for damages is directed to be brought as aforesaid, is dead, or cannot be found within the Territories, an action for damages may be brought against the registrar as nominal defendant, for the purpose of recovering the amount of the said damages and costs against the assurance fund; and in any such case, if final judgment is recovered, and also in any case in which damages are awarded in any action as aforesaid, and the sheriff makes a return of *nulla bona*, or certifies that any portion thereof, with costs awarded, cannot be recovered from such person, the Minister of Finance and Receiver General, upon receipt of a certificate of the court before which the said action was tried, shall pay the amount of such damages and costs as are awarded, or the unrecovered balance thereof as the case may be, and shall charge the same to the account of the assurance fund hereinbefore named. 49 V., c. 26, s. 107.

Recovery
of damages
from assu-
rance fund.

Compare Man. Stat., sec. 134.

Action for
damages
may be
brought
against re-
gistrar as
nominal
defendant.

108. Any person sustaining loss or damage through any omission, mistake or misfeasance of the registrar, or any of his officers or clerks, in the execution of their respective duties under the provisions of this Act, and any person deprived of any land or of any estate or interest in land, by the registration of any other person as owner of such land, or by any error, omission or misdescription in any certificate of title, or in any entry or memorial in the register, and who, by the provisions of this Act, is barred from bringing an action of ejectment or other action for the recovery of such land, estate or interest, may, in any case in which the remedy by action for recovery of damages, as hereinbefore provided, is barred, bring an action against the registrar as nominal defendant, for recovery of damages; and if the plaintiff recovers final judgment against such nominal defendant, the court or judge before whom such action is tried, shall certify to the fact of such judgment and the amount of such damages and costs recovered, and the Minister of Finance and Receiver General shall pay the amount thereof to the person entitled on produc-

Payment
out of as-
surance
fund.

tion of an exemplification or certified copy of the judgment rendered :
 Provided always, that notice in writing of every such action, and the Notice of
 cause thereof, shall be served upon the Attorney-General of Canada, and ^{action.}
 also upon the registrar, three calendar months at least before the com-
 mencement of such action. 49 V., c. 26, s. 108.

Compare Man. Stat., sec. 135 ; and sec. 34 of Amending
 Act of 1890 : (*vide appendix.*)

109. If, in any such action, judgment is given in favor of the nominal ^{Costs of}
 defendant, or the plaintiff discontinues or becomes non-suited, the plain- ^{nominal}
 tiff shall be liable to pay the full costs of defending such action ; and the ^{defendant.}
 same, when taxed, shall be levied in the name of the nominal defendant,
 by the like process of execution as in ordinary civil cases, 49 V., c. 26,
 s. 109.

Compare Man. Stat., sec. 136, as amended by sec. 35 of
 the Act of 1890 ; (*vide appendix.*)

110. No action for recovery of damages sustained through depriva- ^{Limitation}
 tion of land, or of any estate or interest in land, shall lie or be sustained ^{of actions.}
 against the registrar, or against the assurance fund, unless the same is
 commenced within the period of six years from the date of such depriva-
 tion : Provided nevertheless, that any person under the disability of ^{Provido: in}
 infancy, lunacy or unsoundness of mind, may bring such action within ^{case of dis-}
 six years from the date on which such disability ceases ; and the plaintiff ^{ability.}
 in any such action within six years from the date on which such dis- ^{Persons}
 ability ceased, and the plaintiff in any such action at whatever time it is ^{having no-}
 brought, and the plaintiff in any action for the recovery of land, shall be ^{notice non-}
 non-suited in any case in which it appears to the satisfaction of the ^{suited.}
 judge before whom such action is tried, that such plaintiff or the person
 through or under whom he claims title had notice by personal service, or
 otherwise was aware of such delay, and wilfully or collusively omitted to
 lodge a caveat or allowed such caveat to lapse. 49 V., c. 26, s. 110.

Compare Man. Stat., sec. 137.

111. Whenever any amount has been paid out of the assurance fund ^{Recovery}
 on account of any person, such amount may be recovered from him, or if ^{of amount}
 dead, from the estate of such person, by action against his personal ^{paid out of}
 representatives, in the name of the registrar ; and a certificate signed by ^{assurance}
 the Minister of Finance and Receiver General of such payment out of the ^{fund.}
 assurance fund, shall be sufficient proof of such debt ; and whenever any ^{If party}
 amount has been paid out of the assurance fund on account of any person ^{liable is out}
 who has absconded, or who cannot be found within the Territories, and has ^{of Terri-}
 left any real or personal estate within the same, the judge, upon the ^{tories.}

Judgment
to be as
final by
default.

If no prop-
erty to
satisfy
claim.

application of the registrar, and upon the production of a certificate signed by the Minister of Finance and Receiver General that the amount has been paid in satisfaction of a judgment against the registrar as nominal defendant, may allow the registrar to sign judgment against such person forthwith for the amount so paid out of the assurance fund, together with the costs of the application; and such judgment shall be final, subject only to such right to have such judgment opened up, as may be provided in relation to ordinary procedure in the territory in which the real property is situate, in cases of judgment by default; and such judgment shall be signed in like manner as a final judgment by default in an adverse suit, and execution may issue immediately; and if such person has not left real or personal estate within the Territories sufficient to satisfy the amount for which execution has issued as aforesaid, the registrar may recover such amount, or the unrecovered balance thereof, by information against such person at any time thereafter in the Exchequer Court of Canada at the suit of the Attorney General of Canada. 49 V., c. 26, s. 111.

Compare Man. Stat., sec. 138.

Assurance
fund not
liable in
cases of
trusts, etc.

112. The assurance fund shall not, under any circumstances, be liable for compensation for any loss, damage or deprivation occasioned by the breach by a registered owner of any trust, whether express, implied or constructive; nor in any case in which the same land has been included in two or more grants from the Crown; nor shall the assurance fund be liable in any case in which such loss or deprivation has been occasioned by any land being included in the same certificate of title with other land, through misdescription of the boundaries or parcels of any land, unless, in the case last aforesaid, it is proved that the person liable for compensation and damages is dead, or has absconded from the Territories, or has been adjudged insolvent, or the sheriff has certified that he is not able to realize the full amount and costs awarded in any action for such compensation; and the said fund shall be liable for such amounts only as the sheriff fails to recover from the person liable as aforesaid. 49 V., c. 26, s. 112.

Compare Man. Stat., sec. 139.

REMEDIAL PROCEEDINGS.

Appeal
against act
or omission
of registrar.

113. If any person is dissatisfied with any act, omission, refusal, decision, direction or order of the registrar, such person may require the registrar to set forth, in writing under his hand, the grounds of such act, omission, refusal, decision, direction, or order, and such person may then apply to the judge by petition, setting forth the grounds of his dissatisfaction; and the judge, having caused the registrar to be served with such petition, shall have jurisdiction to hear the said petition, and to make

such order in the premises, and as to the costs of the parties appearing upon such petition, as the circumstances of the case require. 49 V., c. 26, s. 113.

Compare Man. Stat., sec. 118.

114. Whenever a question arises with regard to the performance of any duty, or the exercise of any function by this Act conferred or imposed upon the registrar,—or whenever, in the exercise of any duty of the registrar, a question arises as to the true construction or legal validity or effect of any instrument, or as to the persons entitled, or as to the extent or nature of the estate, right or interest, power or authority of any person or class of persons, or as to the mode in which any entry ought to be made on the register or certificate of title, or as to any doubtful or uncertain right or interest stated, or claimed to be dealt with by the registrar, he may refer the same in the form S in the schedule to this Act, to the judge, who may allow any of the parties interested to appear before him and summon any others of such persons to appear and show cause, either personally or by counsel or attorney, in relation thereto; and the judge, having regard to the persons appearing before him, whether summoned or not, shall decide the question, or direct any proceedings to be instituted for that purpose, and direct such particular form of entry to be made on the register or certificate of title as under the circumstances appears to be just. 49 V., c. 26, s. 114.

Registrar may refer doubtful points to judge.

Form of reference.

Proceedings before judge.

See sec. 48 *ante*, and Man. Stat., sec. 120.

FORM S.

REFERENCE BY REGISTRAR TO A JUDGE.

(Date.)

In the matter of the registration of transfer (or as the case may be) A.B. to C.D.

The registrar under section one hundred and fourteen of “*The Territories Real Property Act*,” hereby humbly refers the following matter to the court, to wit: (*Here state briefly the difficulty which has arisen.*)

The parties interested, so far as the registrar knows or has been informed, are: (*Here give the names.*)

(Signature.)

Registrar of Titles. [L.S.]

40 Vic. cap. 26, sch. form S.

115. If it appears to the satisfaction of the registrar that any grant, certificate of title, or other instrument has been issued in error, or contains any misdescription of land, or boundaries,—or that any entry or

In case of fraud, error, etc., instrument may be cancelled.

Judge or
court may
enforce
registrar's
demand.

indorsement has been made in error on any grant, certificate of title or other instrument,—or that any such grant, certificate, instrument, entry or indorsement has been fraudulently or wrongfully obtained, or that any such grant, certificate, or instrument is fraudulently or wrongfully retained, he may, by written demand, require the person to whom such grant, certificate or instrument has been so issued, or by whom it has been so obtained or is retained, to deliver up the same, for the purpose of being cancelled or corrected, as the case requires; and in case such person refuses or neglects to comply with such requisition, or cannot be found, the registrar may apply to the court or judge to issue a summons for such person to appear before him and show cause why such grant, certificate or other instrument should not be delivered up to be cancelled or corrected as aforesaid and if such person, when served with such summons, neglects or refuses to attend before such court or judge at the time therein appointed, the court or judge may issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the said court or judge for examination. 49 V., c. 26, s. 115.

Compare Man. Stat., sec. 121.

Examina-
tion of per-
sons before
judge.

116. Upon the appearance before the court or judge of any person summoned or brought up by virtue of a warrant as aforesaid, such court or judge may examine such person upon oath, and in case it appears right so to do, may order such person to deliver up such grant, certificate of title or other instrument as aforesaid; and upon refusal or neglect by such person to deliver up the same, pursuant to such order, or to be put under oath, or to be examined, or to answer any question touching the matter after being sworn, may commit such person to the nearest common gaol for any period not exceeding six months, unless such grant, certificate of title or other instrument is sooner delivered up, or sufficient explanation is made why the same cannot be done, and in such case, or in case such person has absconded so that summons cannot be served upon him as hereinbefore directed, such court or judge may direct the registrar to cancel or correct any certificate of title or other instrument, or any entry or memorial in the register relating to such land, and to substitute and issue such certificate of title or other instrument or make such entry as the circumstances of the case require, and the registrar shall obey such order. 49 V., c. 26, s. 116.

Power to
commit.

Cancellation
of cer-
tificate by
order of
judge.

Compare Man. Stat., secs. 122, 124-127.

Court or
judge may
order can-
cellation,
etc.

117. In any proceeding respecting land or in respect of any transaction or contract relating thereto, or in respect of any instrument, caveat, memorial or other entry affecting land, the court or judge, by decree or order, may direct the registrar to cancel, correct, substitute or

issue any certificate of title, or make any memorial or entry in the register, and otherwise to do every such act or make every such entry necessary to give effect to such decree or order. 49 V., c. 26, s. 117.

Compare Man. Stat., sec. 123 and notes.

GENERAL PROVISIONS.

118. Upon the application of any owner of lands held under separate certificates of title, or under one certificate of title, and the delivering up of such certificate or certificates of title, the registrar may issue to such proprietor a single certificate of title for the whole of such land, or several certificates, each applying to a portion of such lands, in accordance with such application, and as far as the same may be done consistently with any regulation for the time being in force respecting the parcels of land that may be included in one certificate of title; and, upon issuing any such certificate of title, the registrar shall enter on the new certificate of title all the memorials to which the piece of land is at the time subject, and shall cancel the previous certificate of title of such land so delivered up, and shall endorse thereupon a memorandum, setting forth the occasion of such cancellation and referring to the certificate of title so issued. 49 V., c. 26, s. 118.

Registrar may cancel separate certificates to same person and issue one certificate for whole land.

Compare Man. Stat., Rule 21, Sch. S., sec. 26.

119. In the event of a certificate of title of land being lost or destroyed the owner of such land, together with other persons, if any, having knowledge of the circumstances, may make a declaration, stating the facts of the case, the names and descriptions of the registered owners, and the particulars of all mortgages, encumbrances and other matters affecting such land and the title thereto, to the best of declarant's knowledge and belief; and the registrar, if satisfied of the truth of such declaration and the *bonâ fides* of the application, may issue to the owner of such land a provisional certificate of title of such land, which provisional certificate shall contain an exact copy of the original certificate of title bound up in the register; and of every memorandum and indorsement thereon, and shall also contain a statement why such provisional certificate is issued; and the registrar shall, at the same time, enter in the register notice of the issuing of such provisional certificate and the date thereof, and why it was issued; and such provisional certificate shall be available for all purposes and uses for which the grant or certificate of title so lost or destroyed would have been available, and as valid, to all intents, as such lost certificate: Provided always, that the registrar, before issuing such provisional certificate, shall give at least thirty days' notice of his intention so to do, in some newspaper published in the registration district, if

Provision in case of loss or destruction of certificate.

Provisional certificate.

Entry in register.

Notice to be given by registrar.

there is one, and by posting such notice upon the door of the registry office, and in some other public place. 49 V., c. 26, s. 119.

Compare Man. Stat., sec. 68 (7) ; and see form of notice, p. 114 *ante*.

Maps of
sub-division of
land.

120. Any owner subdividing land for the purpose of selling the same in allotments, as a town plot, shall deposit with the registrar a map of such town plot,—which map shall be on a scale of not less than one inch to four chains, and shall show the number of the section, township and range, or the number of the river lot, or the name of the district or reservation, as the case may be, in which the land lies ; also the number of the meridian west of which the said range, river lot, district or reservation is situated, as well as all boundary lines of the section or sections, river lot, district or reservation, within the limits of the land shown on the said map, and shall also exhibit distinctly all roads, streets, passages,

Particulars
shown.

thoroughfares, squares or reservations, appropriated or set apart for public use, with the courses and widths thereof respectively, the length and width of all lots, and the courses of all division lines between the respective lots within the same ; and such lots shall be marked with distinct numbers or symbols ; and such map shall further show the courses of all streams or waters within the limits of the land included in such map ; and every such map shall be signed by the owner or his agent, and certified, in the form T in the schedule to this Act by a Dominion land surveyor, under and in accordance with the provisions of sections one hundred and one and one hundred and two of this Act.

Map to be
signed and
certified.

49 Vic. cap. 26, sec. 120, as amended by 51 Vic. cap. 20, sec. 19. Compare sec. 36 *ante*. See Man. Stat., sec. 69, and amendment thereto by sec. 23 Act of 1890 (*vide appendix*).

FORM T.

I,
Dominion Land Surveyor, do solemnly declare that this plan accurately shows the manner in which the land included therein has been surveyed and subdivided by me, and that the said plan is prepared in accordance with the provisions of "*The Territories Real Property Act*," chapter fifty-one of the Revised Statutes of Canada.

Dated at

18

A. B.

Dominion Land Surveyor.

Implied
covenants
may be ne-

121. Every covenant and power declared to be implied in any instrument by virtue of this Act may be negatived or modified by express

declaration in the instrument or indorsed thereon; and in any action for a supposed breach of any such covenant, the covenant alleged to be broken may be set forth, and it shall be lawful to allege that the party against whom such action is brought did so covenant, precisely in the same manner as if such covenant had been expressed in words in such memorandum of transfer or other instrument, any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect, and be enforced in the same manner as if it had been set out at length in such instrument; and where any memorandum of transfer or other instrument in accordance with this Act, is executed by more parties than one, such covenants as are by this Act to be implied in instruments of a like nature, shall be construed to be several and not to bind the parties jointly. 49 V., c. 26, s. 121.

Compare Man. Stat., sec. 144 and notes; also R. S. C. cap. 1, sec. 7 (44).

As to the effect of deeds, transfers, etc., see secs. 6-17 *ante*.

An estate in fee cannot, since the 1st January, 1887, be changed into a fee-tail, or limited; sec. 12 *ante*.

See secs. 34, 59 and 64 as to necessity of registration.

Sec. 35 prohibits the entry of trusts express, implied or constructive.

Implied covenants, etc., are provided for by sections 61, 69, 71, 72, 74, 77, 78, 80, 86, 87, 88 and 93 of this Act.

122. The owner of any land or of any lease, mortgage or charge, shall, on the application of any beneficiary or person interested therein, be bound to allow his name to be used by such beneficiary or person in any action, suit or proceeding, which it may be necessary or proper to bring or institute in the name of such owner, concerning such land, lease, mortgage or charge, or for the protection or benefit of the title vested in such owner, or of the interest of any such beneficiary or person; but nevertheless such owner shall, in any case, be entitled to be indemnified in like manner as, if being a trustee, he would, before the passing of this Act, have been entitled to be indemnified in a similar case of his name being used in any such action, suit or proceeding by his *cestui que trust*. 49 V., c. 26, s. 122.

Compare Man. Stat., sec. 145.

123. Whenever any person, who, if not under disability, might have made any application, given any consent, done any act, or been party to any proceeding under this Act, is a minor, idiot or lunatic, the guardian

Owner to allow use of his name in suits.
But entitled to indemnity.
Guardian or committee may act for person under disability.

Court or judge may appoint guardian or committee

or committee of the estate, respectively, of such person may make such application, give such consent, do such act, and be party to such proceeding as such person if free from disability might have made, given, done and been party to, and shall otherwise represent such person for the purposes of this Act; and whenever there is no guardian or committee of the estate of any such person aforesaid being infant, idiot or lunatic, or whenever any person, the committee of whose estate if he were idiot, or lunatic, would be authorized to act for and represent such person under this Act, is of unsound mind and incapable of managing his affairs, but has not been found an idiot or lunatic under inquisition, any court of competent jurisdiction or a judge thereof, may appoint a guardian of such person for the purpose of any proceedings under this Act, and from time to time change such guardian. And whenever such court or a judge thereof sees fit, it or he may appoint a person to act as the next friend of a married woman for the purpose of any proceeding under this Act, and from time to time remove or change such next friend. 49 V., c. 26, s. 123.

Next friend of married woman.

Compare Man. Stat., sec. 148 and form given on page 208 *ante*.

How purchaser for valuable consideration shall be ascertained

121. Whenever, in any action, suit or other proceeding affecting the title to land or other estate or interest therein, subject to the provisions of this Act, it becomes necessary to determine the fact whether the transferee, mortgagee or encumbrancee, or lessee, is a purchaser or transferee for valuable consideration or not, any person who is a party to such action, suit or other proceeding, may give in evidence any transfer, mortgage, encumbrance, lease or other instrument affecting the title to such land, estate or interest in dispute, although the same is not referred to in the certificate of title, or has been cancelled by the registrar. 49 V., c. 26, s. 124.

Compare Man. Stat., sec. 146.

Encumbrance prior to grant may be filed.

125. Any mortgage or other encumbrance created by any party right fully in possession of land prior to the issue of the grant, may be filed in the office of the registrar, who shall, on registering such grant, enter in the register and endorse upon the certificate of the title before issuing the same to the applicant owner thereof a memorandum of such mortgage or encumbrance; and when so entered and indorsed, the said mortgage or encumbrance shall be as valid as if made subsequent to the issue of the grant; and if more than one mortgage or encumbrance are filed, they shall be registered in the order of time in which they have been filed in the office. 49 V., c. 26, s. 125.

Compare Man. Stat., secs. 81 and 95, and amending Act of 1890, sec. 29 (*vide appendix*).

126. Except in the case of fraud, no person, contracting or dealing with or taking or proposing to take a transfer from the registered owner of any registered estate or interest, shall be bound or concerned to inquire into or ascertain the circumstances in, or the consideration for which such registered owner, or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase money or of any part thereof, nor shall he be affected by notice, direct, implied or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any trust or unregistered interest is in existence, shall not of itself be imputed as fraud. 49 V., c. 26, s. 126.

See sec. 35 *ante*; and compare Man. Stat., sec. 85.

127. In any suit for specific performance brought by a registered owner of any land under this Act, against a person who has contracted to purchase such land, not having notice of any fraud or other circumstances which, according to this Act, would affect the right of the vendor, the certificate of title of such registered owner shall be held conclusive evidence that such registered owner has a good and valid title to the land, for the estate or interest therein, mentioned or described, and shall entitle such registered owner to a decree for the specific performance of such contract. 49 V., c. 26, s. 127.

See secs. 30 and 119 *ante* as to copies of instruments, and provisional certificates.

Compare Man. Stat., sec. 66.

128. Upon the transfer of any land, estate or interest under the provisions of this Act, to two or more persons as joint owners, to be held by them as trustees, it shall be lawful for the transferor to insert in the memorandum of transfer or other instrument the words "no survivorship;" and the registrar shall, in such case, include such words in the memorial of such instrument, to be entered by him in the register as hereinbefore directed; and shall also enter the said words upon any certificate of title issued to such joint owners pursuant to such memorandum of transfer; and any two or more persons registered as joint owners of any land, estate or interest, under this Act, held by them as trustees, may, by writing under their hand, authorize the registrar to enter the words "no survivorship" upon the certificate of title or other instrument evidencing their title to such estate or interest, and also upon the duplicate of such instrument in the register or filed in his office; and after such entry has been made and signed by the registrar in either such case as aforesaid, it shall not be lawful for any less number of joint proprietors than the number then registered to transfer or otherwise deal with the said land,

Purchaser not affected by notice, except in case of fraud.

Suits for specific performance.

Insertion of words "no survivorship."

Joint owners may authorize entry.

Effect of entry in register.

estate or interest, without obtaining the sanction of a court or a judge thereof, by an order on motion or petition. 49 V., c. 26, s. 128.

Compare Man. Stat., sec. 82.

Notice before order at court or judge

129. Before making any such order as aforesaid, the court or judge shall, if it seems requisite, cause notice of intention so to do to be properly advertised, (a) and in such cases appoint a period of time within which any person interested may show cause why such order should not be made; and thereupon the said court or judge may order the transfer of such land, estate or interest to any new owner or owners, solely or jointly with or in the place of any existing owner or owners, or may make such order in the premises as the court thinks just, for the protection of the persons beneficially interested in such land, estate or interest, or in the proceeds thereof; and upon such order being deposited with the registrar, he shall make such entry, and upon such entry being made, the person or persons named in such order shall be registered as owner or owners of such land, estate or interest. 49 V., c. 26, s. 129.

Deposit of order and entry thereof.

Compare Man. Stat., sec. 83.

(a) There is no general provision as to how notices are to be advertised. Compare directions as to notices required by secs. 52, 81, 98 and 119 *ante*. Sec. 63 *ante* saves the rights of *bona fide* purchasers against impeachment for want of notice. See also R. S. C. cap. 139, sec. 7.

Jurisdiction of courts as to fraud, contract and equitable interests.

130. Nothing contained in this Act shall take away or affect the jurisdiction of any competent court on the ground of actual fraud, or over contracts for the sale or other disposition of land, or over equitable interest therein. 49 V., c. 26, s. 130.

Compare Man. Stat., sec. 129.

Exceptions as to mines.

131. Whenever, in any grant, or instrument under this Act, any mines or minerals are excepted from the grant or transfer, the registrar, on issuing a certificate of title, shall therein insert the words so used in the grant or instrument. 49 V., c. 26, s. 131.

Compare Man. Stat., sec. 84. See also sec. 54 *ante*.

Books, forms, rules, etc.

132. The Governor in Council may, from time to time, provide the necessary books and forms, provide any additional forms he deems necessary, and make such rules and regulations as are necessary to carry the provisions of this Act into effect; and may make such rules and regulations as to him appear necessary for giving effect to this Act, in

cases unprovided for, according to its true intent and purpose. 49 V., c. 26, s. 132.

Compare Man. Stat., sec. 26.

So far no rules and regulations have been promulgated under this section.

133. The Governor in Council may, from time to time, settle by Fees, tariff the fees to be paid under the provisions of this Act, or in connection therewith :

2. Except as herein otherwise provided, there shall be paid, together with the fees under this Act which are, from time to time, fixed by the Governor in Council, one-fiftieth of one per cent. on the value of the real property registered, if such value amounts to or is less than five thousand dollars, and one-tenth of one per cent. on the additional value, when such value exceeds five thousand dollars :

3. The value shall be ascertained by the oath or solemn affirmation of the applicant, owner or person acquiring such land ; and if the registrar is not satisfied as to the correctness of the value so affirmed or sworn to, he may require such applicant, owner or person acquiring such land to produce a certificate of such value, under the hand of a sworn valuator, appointed by a judge, —which certificate shall be received as conclusive evidence of such value for the purpose aforesaid.

49 Vic. cap. 26, sec. 133, as amended by 51 Vic. cap. 20, sec. 20.

Compare Man. Stat., secs. 21, 71 and 140.

TARIFF OF FEES IN LAND TITLES OFFICES IN THE TERRITORIES.

GOVERNMENT HOUSE, OTTAWA,

Tariff.

FRIDAY, 23rd day of November, 1888.

PRESENT : His Excellency the Governor General in Council.

On the recommendation of the Minister of the Interior, and under the provisions of the 133rd Section of Chapter 51, of the Revised Statutes of Canada, intituled : "An Act respecting Real Properties in the Territories."

His Excellency the Governor General has been pleased to order, and it is hereby ordered, that the "Tariff of Fees" fixed and settled by Order in Council of the 15th January, 1887, as the fees which shall be demanded by, paid to, and received by the several Registrars of Land Registration Districts in the North West Territories, be and the same are hereby abolished upon the expiration of the 31st December, 1888, and the following Tariff of Fees substituted in lieu thereof on and after the 1st January, 1889.

the court or a judge
6, s. 128.

the court or judge
to do to be properly
within which any
could not be made ;
transfer of such land,
jointly with or in
such order in the
on of the persons
or in the proceeds
registrar, he shall
person or persons
owners of such land,

now notices are
notices required
ante saves the
penachment for
sec. 7.

way or affect the
tual fraud, or over
or over equitable

this Act, any mines
the registrar, on
ords so used in the

c. 54 *ante*.

time, provide the
forms he deems
necessary to carry
such rules and
et to this Act, in

TARIFF OF FEES.

1. Each certificate of ownership for lands granted since the 1st January, 1887, shall be issued and delivered or mailed to the person entitled thereto, free of charge, if at the time of the issue of such certificate the patent, or the notification mentioned in Section 9 of 51 Victoria, Chapter 20, is the only instrument in the hands of the Registrar affecting the land.

2. Each certificate of ownership issued in accordance with an application made under the provisions of Section 45 of Chapter 51 of the Revised Statutes of Canada, where at the time of the issue of such certificate the patent is the only instrument in the hands of the Registrar affecting the land, shall be issued and delivered or mailed to the person entitled thereto, for a fee of \$1 00

3. For each certificate of ownership which does not fall within one of the two classes above mentioned..... 2 00

And in addition to the fee of \$2.00 for the certificate in such cases the percentage fee provided by Section 20 of 51 Victoria, Chapter 20, and other necessary fees for registrations, abstracts, etc., which are provided for by this Tariff, must also be paid.

4. For filing and registering any transfer, mortgage, encumbrance charge or surrender, or any assignment or discharge, wholly or partially, of a mortgage, encumbrance, or charge, or a satisfaction of an annuity, or any other instrument affecting land other than those hereafter particularly specified..... 1 00

5. For each memorial endorsed on a certificate of ownership.... 50

6. For registering proprietor of any freehold estate on a transmission..... 2 00

7. For each registration abstract, including all charges for searches and certificates, from 1 to 5 entries inclusive..... 50

And for each additional entry over five..... 10

8. For filing each caveat, and for preparing and mailing from 1 to 4 notices in connection therewith..... 2 00

And for each additional notice over four..... 25

9. For entering withdrawal of caveat..... 1 00

10. For entry of foreclosure..... 1 00

11. For each search..... 25

12. For each map deposited..... 1 00

13. For registering recovery of possession by legal proceedings or registering a lessor as surrenderee..... 2 00

14. For vesting of lease in mortgagee on refusal of assignee to accept the same..... 2 00

15. For entering notice of marriage or death..... 50

16. For entering notice of writ of *fi. fa.*, or of any order, certificate, or decree of a court or judge..... 1 00

17. For entering satisfaction of any writ, or entering notice setting aside writ, order, certificate, or decree.....	\$0 50
18. For production of each instrument, filed or registered, except such instrument is required in connection with an application for a certificate of ownership, in which case it is to be produced free of charge.....	10
19. For returning the documents of title deposited in support of an application for withdrawal or rejection of any application for certificate of ownership.....	1 00
20. For inspecting each material instrument of title to land for which certificate of ownership is asked to be granted.....	10
21. For copy of or extract from any registered instrument, or instrument otherwise in the custody of the Registrar, per folio of one hundred words.....	10
22. (a) For copy of every map or tracing attached to or endorsed on any document.....	2 00
(b) For copy of each map or plan deposited in office, for each lot plotted thereon up to and inclusive of 100 lots.....	03
And for each additional lot over 100.....	02
(c) And for copy or tracing shewing one block of lots or of one or more lots in one block on any such map or plan.....	2 00
23. For each certificate that copy or extract is correct, signed by Registrar, and authenticated by his official seal.....	25
24. For taking each affidavit or statutory declaration.....	20
25. For each special commission issued by a Court or Judge....	3 00
26. For each summons.....	50
27. For examination thereunder, per hour.....	1 00
28. For entering executor, administrator, curator or guardian, or any assignee of any insolvent, as transferee or proprietor.....	1 00
29. For entering husband as joint proprietor.....	1 00
30. For entering survivor, or other person as proprietor in the case of a joint proprietorship.....	1 00
31. For each certificate to Court.....	2 00
32. For filing and entering adverse claim with statement and affidavit.....	2 00
33. For a new certificate issued to replace worn out, filled up, destroyed, or lost certificate.....	2 00
34. For consolidating two or more certificates.....	2 00

134. The registrar shall demand and receive the several fees so settled, Fees to be and perform the duties for which fees are specified in this Act on pay- paid to ment thereof. 49 V., c. 26, s. 134. Registrar.

See Man. Stat., sec. 21.

Account of fees and payment to Receiver-General. **135.** The registrar shall keep a correct account of all sums of money received by him in accordance with the provisions of this Act, and shall pay the same to the Minister of Finance and Receiver General, at such times and in such manner as are directed by the Governor in Council. 49 V., c. 26, s. 135.

See Man. Stat., sec. 22.

Proceedings not to abate. Judge's order. **136.** Proceedings under this Act shall not abate or be suspended by any death, transmission or change of interest, but in any such event the judge may make such order for carrying on, discontinuing or suspending the proceedings, upon the application of any person interested, as under the circumstances he thinks just, and may for such purpose require the production of such evidence, and such notices to be given as he thinks necessary. 49 V., c. 26, s. 136.

Compare Man. Stat., secs. 49, 50, 51 and 113.

Documents not invalid for informality. **137.** No petition, order, affidavit, certificate, registration or other proceeding under this Act shall be invalid by reason of any informality or technical irregularity therein, or of any mistake not affecting the substantial justice of the proceedings. 49 V., c. 26, s. 137.

Compare Man. Stat., secs. 77 and 142.

Appeal. **138.** Any person who feels aggrieved by any judgment or decision of the court or judge and also the Inspector of Land Titles Offices and any Registrar or Deputy Registrar, may appeal from any judgment or decision to the Court of Appeal; and for the purposes of this Act the several judges of the Supreme Court of the North-West Territories sitting together are hereby constituted the Court of Appeal, and a majority of such judges shall form a quorum. Such Court of Appeal shall be presided over by the senior judge present, and shall sit at least once in each year at the seat of government of the North-West Territories for the purpose of hearing appeals from any such judgment or decision as aforesaid; and such court shall have power, by rules and orders, to regulate the sittings of the court, the practice and proceedings on appeal and before it, including costs and payment thereof, and the enforcement of judgments of such court; and such judgment shall be certified by the presiding judge, and shall be final in all cases.

Composition of Court of Appeal.

Sittings.

Powers to make rules.

Judgment final.

49 Vic. cap. 26, sec. 138;—49 Vic. cap. 25, sec. 30, as amended by 51 Vic. cap. 20, sec. 21.

This section was recast in 1887 by section six of chapter thirty of the Statutes of that year (50-51 Vic.), but in the

Statute (chapter 20) of 1888 the foregoing was substituted as section 138 of this Act.

Compare sec. 126 of the Manitoba Statute.

PENALTIES.

139. Every person who,—

(a) Wilfully makes any false statement or declaration in any dealing in land under this Act, or—

(b) Suppresses or conceals, or assists or joins in, or is privy to the suppressing, withholding or concealing from the registrar, court or judge, or either of them, any material document, fact or matter of information, or—

(c) Wilfully makes any false statement in any declaration required under the authority of or made in pursuance of this Act, or—

(d) Fraudulently procures or is privy to the fraudulent procurement of any certificate of title or instrument, or of any entry in the register, or—

(e) Knowingly misleads or deceives the court, the judge, the registrar or any person hereinbefore authorized to require explanation or information in respect to any land or the title to any land under this Act, or in respect to which any dealing or transmission is proposed to be registered, or—

(f) Is a party to or privy to any fraudulent act whatever in any matter connected with the working of this Act,—

Shall, on conviction before a judge or stipendiary magistrate, without a jury, be liable to a penalty not exceeding five hundred dollars or to imprisonment, with or without hard labor, for any period less than two years. 49 V., c. 26, s. 139.

Compare Man. Stat., secs. 149 and 150.

Punishment of persons making wilfully false statements or guilty of fraud in matters relative to registration.

END OF PART III.

APPENDIX.

CHAPTER 5 OF THE STATUTES OF MANITOBA.

53 VICTORIA.

AN ACT TO AMEND CHAPTER SIXTEEN OF FIFTY-TWO
VICTORIA, BEING "AN ACT RESPECTING REAL PRO-
PERTY IN THE PROVINCE OF MANITOBA."

(Assented to 31st March, 1890.)

HER MAJESTY, by and with the advice and consent of the Legis-
lative Assembly of the Province of Manitoba, enacts as follows :

1. Section 1 of chapter sixteen of the Statutes passed in the fifty-second year of Her Majesty's reign is hereby repealed, and the following section substituted therefor : Sec. 1 re-
pealed, and
substitu-
tion.

1. This Act, with all amendments that may at any time be made thereto, or to any such amendments may together be cited and known as "The Real Property Act of 1889," and when, in any statute of this Province now in force and unrepealed, reference is made to "The Real Property Act of 1885," or to that Act and amendments thereto, under whatever name that Act and amendments is or are cited, such reference shall be held to apply to and include "The Real Property Act of 1889." Title of Act.

This amendment should be noted at all the forms printed with the R. P. Act, 1889, in this Manual.

2. Sub-section 4 of section 3 of said Act is amended by adding at the end thereof the following words : "or any hypothecation of such charge." Sec. 3, ss. 4
amended.

See note to next section.

3. Sub-section 7 of said section 3 is amended by adding at the end thereof the words "or any hypothecation of such charge or lien." Sec. 3, ss. 7
amended.

Compare notes as to sub-leases and sub-mortgages, pp. 22 and 25 *ante*, and sections there referred to.

See notes to secs. 87 and 95 R. P. Act, 1889, pp. 138 and 148 *ante*.

Sec. 3, ss. 17
amended.

4. Sub-section 17 of said section 3 is amended by inserting after the word "execution" in the second line thereof the words "tax-sale, assignment for benefit of creditors."

Compare sub-sec. (b), sec. 17 and sec. 29 *post*.

Sec. 3, ss. 18
amended.

5. Sub-section 18 of said section 3 is amended by adding at the end thereof the words "and whether such land was held by the Crown for the purposes of the Dominion of Canada or for the purposes of any Province thereof."

See note to sec. 10 *infra*.

6. Said section 3 is further amended by adding thereto the following sub-section :

"Lease" in-
cludes
"sub-
lease."

(27) The word "lease" shall include a sub-lease, and the word "lessee" shall mean and include a "sub-lessee."

Compare note to sec. 87, R. P. Act, 1889, p. 138 *ante*.
See also sec. 30 *post*.

Bond of
registrar.

7. Section 8 of said Act is amended by striking out all the words after the word "council" in the fourth line, and substituting therefor the words "for the due payment over of all moneys received by him as such District Registrar."

Sec. 10 re-
pealed, and
substitu-
tion.

8. Section 10 of said Act is repealed, and the following substituted therefor :

10. The Registrar-General or his deputy appointed under "The Real Property Act of 1885," or any district registrar appointed under this Act, shall have full power to furnish originals or certified copies of all registers, books or instruments, or of any certified copies of registers, books or instruments in his office, affecting lands within the district or under the control of such Registrar General or District Registrar when such lands are, under section four of this Act, added to or formed into another district, and all such originals or certified copies shall for all purposes be of the same force and effect when deposited in the office of the new district as if they were originals and had been originally registered, deposited or kept in that office. This section shall be read as if it had come into force on the 5th day of March, 1889.

Certified
copies of
records to
new dis-
tricts.

See note to sec. 48 *post*.

9. Section 16 of said Act is amended by inserting after the word "as," in the fourth line thereof, the words "but no greater effect than," and

by adding at the end of said section the words, "and no registration made under the old system, either prior or subsequent to the said date so named shall affect any land, which, at the time of such registration, was or is subject to, or under the provisions of the new system, so long as such land remains subject to the new system; nor shall any registration, made or hereafter made under the new system, affect any land which is not subject to or under the new system; and no registration made in any registration division prior to the said date so named, or in the office of any land titles district prior to the date when a portion of such district is added to some other district, shall, after said date, have the effect of binding any land, other than the land it would have bound or affected had that registration division not been brought into a land titles district, or that portion of a land titles district not been added to some other district." It is hereby declared that this section, as amended, was always intended to have the effect and meaning it has, as now amended.

After union of two systems no registration to have greater effect than when registration took place.

Section re-
troactive.

Compare notes on pages 55 and 56 *ante*. *Quere*, what would be the effect of the amended section upon unregistered *fi. fa.* in the sheriff's hands?

In *re Murchison*, where a transfer was presented before the passing of this Act, the District-Registrar for Winnipeg refused its registration, except subject to *fi. fa.*, which had not been registered as required by the R. P. Act of 1885, but were still in force in the sheriff's hands, and held that this registration was merely an additional formality imposed upon the execution creditors to make writs in the sheriff's hands bind lands requiring to be dealt with under the "New System," and was dispensed with by the repealing clauses of the R. P. Act of 1889, which removed the restriction and permitted writs to bind all lands in the bailiwick as provided by the Administration of Justice Act.

On a reference of the case to the Court, Mr. Justice Killam held that, for want of registration, the *fi. fa.* did not bind the land, and ordered the issue of the certificate of title to the transferee clear of any such encumbrances.

The insertion of the words "but no greater effect," etc., does not so extend the amended section (16) as to affect any but the registrations made in old system registry offices

prior to their abolition and would leave *fi. fa.* with the same binding effect as they had at the time of the above decision.

The section as now amended restricts general liens to the limits of the district as constituted at the time of their registration.

Section 28
amended.
To include
Crown
grants.

10. Section 28 of said Act is amended by inserting after the word "in," at the end of the first line thereof, the words "any grant of Crown lands or in," and by inserting in the third line, after the word "every," the word "grant," and by inserting before the word "grantor" in the fifth line, the words "Crown or," and by striking out all the words in said section, after the word "estoppel" in the eighth line.

Compare notes at page 72, *ante*.

The Legislature of Manitoba can have no authority that can in this manner affect Dominion lands (*B. N. A. Act 1867*, secs. 91, 92;) and it would not appear that the Crown could in any case be affected by these provisions: *R. S. C.* cap. 1, sec. 7 (46), and *C. S. M.* cap. 1, sec. 7 (30).

During the present session (1890) of the Dominion Parliament a bill has been introduced respecting Grants of Public Lands, providing that although no words of limitation be used in Crown grants the fee simple shall be thereby conveyed unless a contrary or different intention be expressed.

11. Section 34 is amended by adding thereto the following sub-section:—

When
mortgagor
dead notice
may be
served on
executor or
adminis-
trator.

(1) When, by or under any indenture of mortgage, whether under the new or the old system, and whether heretofore or hereafter made, any notice is stipulated to be given to the mortgagor, his heirs or assigns, such notice may be given, in cases where such mortgagor or his assign is dead, to the executor or administrator of such deceased person; and such notice shall be as effectual as if made in conformity with such stipulation.

See section 39 *infra*; compare sections 99, 103, 104, 106 and 107 of the *R. P. Act* of 1889 *ante*.

Section 40
amended.

12. Section 40 of said Act is amended by adding thereto the following sub-section:—

(2) Notwithstanding anything in this section contained, an application shall not be received to bring under the new system an undivided interest in any land, unless an application is also made for all other undivided interests in the same land; and no withdrawal or rejection of any application for an undivided interest shall be permitted, unless the application for all other undivided interests in the same land are withdrawn or rejected. As to undivided interests.

Compare section 27 *post*.

13. Section 46 of said Act is amended by striking out all the words from, and including the word "issue" in the nineteenth line thereof, down to and including the word "rejection" in the twenty-third line thereof, and by substituting for such words struck out, the following words, "cause to be entered in the proper abstract book, under the old system, a memorandum stating that such application has been withdrawn or rejected, and upon the entry of such memorandum." Section 46 amended.

Compare note to sec. 42 R. P. Act of 1889 at p. 85 *ante*.

See note to section 15 *post*.

14. Section 47 of said Act is amended by striking out all the words in said section after the word "entitled" in the thirteenth line thereof. Section 47 amended.

See note to next section.

15. Section 48 of said Act is amended by striking out the word "certificate" in the fifth line thereof and substituting therefor the word "memorandum," and by striking out the word "signed" in the sixth line thereof and substituting therefor the words "entered in the abstract books under the old system." Section 48 amended.

Compare note to sec. 42, page 85 *ante*. This and the two preceding sections simplify the method of returning land in the operation of the "Old System."

16. Section 56 of said Act is amended by striking out the word "and" in the ninth line and substituting therefor the word "or." Section 56 amended.

17. Section 57 of said Act is amended by inserting in the third line of sub-section (a) after the word "may" the following words "without requiring the proceedings necessary under this Act in the case of a lost certificate of title to be taken," and by adding thereto the following sub-section:

(b) The expression "tax deed" or "tax sale deed" shall be held to mean and include any vesting certificate of the nature or effect of the certificate set forth in sub-section 1 of 49 Vic., cap. 52, section 656. Tax deed to include certificate vesting land in municipality.

Vide note (f) section 57, R. P. Act of 1889, p. 100 *ante*, as to dispensing with the production of certificate of title.

Sub-section (b) now added covers the case where the municipality becomes the purchaser of lands within its boundaries at a sale for arrears of taxes.

Note the distinction between "deeds" and "transfers;" compare notes to sec. 144, R. P. Act 1889, p. 205 *ante*, and the amendment as to the meaning of the word "transmission" by the fourth section of this Act, *supra*.

Section 63 amended. **18.** Section 63 of said Act is amended by adding thereto the following sub-sections:

Caveats. (k) Caveats affecting the land registered since the last date of the certificate of title.

Fi. Fas., etc. (l) Writs of execution or attachment lodged or maintained in force in the office of the sheriff of the proper judicial district between the original date of the certificate of title and the first day of April 1889, in cases where such date of the certificate of title is prior to said first day of April.

See notes to sec. 9 of this Act, *supra*.

Compare note to sec. 63, p. 105 *ante*.

Sec. 68, ss. 3 amended. **19.** Sub-section 3 of section 68 of said Act is amended by striking out the word "prescribed" in the second line thereof, and by adding after the word "form" in the same line the words "of Schedule U."

See section 42 *post*.

Sec. 68, ss. 6 amended. **20.** Sub-section 6 of said section 68 is amended by striking out the word "grant" where it occurs in the eighth and thirteenth lines, and by substituting therefor in each case the words "certificate of title."

Sec. 68, ss. 7 amended. **21.** Sub-section 7 of said section 68 is amended by striking out the words "grant or" where they occur in the first, thirteenth, twentieth and twenty-second lines of said sub-section.

Sec. 68, ss. 8 amended. **22.** Sub-section 8 of said section 68 is amended by inserting after the word "surveyor" in the seventh line thereof the words "under oath in the form in Schedule T to this Act."

See note to section 24 *post*.

Sec. 69 amended. **23.** Section 69 of said Act is amended by adding after the word "hereto," at the end of said section, the words "and where the land

affected is in a town or city, having a town or city engineer, all plans presented for registration shall be approved of and signed by such engineer before the same can be registered," and by inserting after the word "has" in the third line of sub-section (a) the words "or has not," and by striking out the words "the foregoing," where they occur together in the seventh line and substituting therefor the word "this."

See note to next section.

24. Section 70 of said Act is amended by adding at the end thereof the words "and certified to be accurate by a provincial land surveyor under oath in the form in schedule T to this Act." ^{amended.}

This and the two preceding sections clear away the confusion in the reference to the rules as to plans existing in the Act of 1889, p. 116 *ante*, and render plans of the right of way and station grounds of railway companies subject to the same regulations, for registration purposes, as town plots.

25. Section 74 of said Act is amended by adding thereto the following sub-sections:

(1) Notwithstanding any defect in the proof or form of execution of any instrument presented for registration under the new system, the district registrar may, in his discretion, upon being satisfied of the due execution of such instrument, register the same, and such registration shall be valid and effectual for all purposes, notwithstanding any such defect. ^{Instruments registered, though execution irregularly proved.}

(2) In all cases, unless the district registrar shall dispense with it, there shall be annexed to every instrument dealing with land under the new system an affidavit, statutory declaration or other evidence proving to the satisfaction of the district registrar that the party dealing with the land is of the full age of twenty-one years. ^{Transfers, etc., to contain affidavit as to age of transferor, etc.}

Compare amendment to sec. 77 of the R. P. Act 1889 by sec. 27 *infra*.

See notes *In re Farmers, etc. Co. v. Conklin*, and *Renwick v. Berryman*, p. 126 *ante*.

The proof as to age does not appear to be required except in the case of dealings under the "New System."

Compliance with the requirements of the amended section 20 of cap. 60, C. S. Man., p. 123 *ante*, is still necessary,

as to dealings under the "Old System," notwithstanding the liberal discretion given by this newly added subsection (1).

Where an irregular instrument is presented for registration under the "new system" it must still be sufficient to "*pass an estate, etc.*," in order to be received, and registered as provided by section 77, R. P. Act 1889.

See remarks of Bain, J., in *Shore v. Green*, as to an informal lease; p. 206 *ante*.

Note the meaning of the term "Instrument" as interpreted by sec. 3 (12), page 44 *ante*. Mr. Justice Bain considered that a copy of a writ of execution might be considered "an instrument;" *Herbert v. Gibson*, 6 Man. L. R. 192.

Section 76
amended.

26. Section 76 of said Act is amended by striking out the word "instrument" in the eleventh line thereof and substituting therefor the word "memorial."

27. Section 77 of said Act is amended by adding thereto the following sub-sections:

▲ All land
must be
under new
system,
and in
same dis-
trict.

(1) Except as in this section mentioned and except instruments affecting land without specific description, no instrument shall be registered under the new system unless all the land affected by such instrument is under the operation of the new system and within the same land titles district.

Certificate
of judg-
ment to be
registered
under both
systems.

(2) Certificates of judgment and attachment presented for registration shall be registered under both the new and the old system, and shall have the effect upon land under both systems given to such certificates by the administration of Justice Act and amendments thereto, or by the County Court Act and amendments thereto, as the case may be.

These newly added provisions avoid the difficulty suggested at pages 130-131 *ante*. Compare also the amendment to sec. 74 by section 25 *supra*.

Section 66
repealed,
and substi-
tution.

28. Section eighty-six of said Act is repealed, and the following section substituted:

No trusts
to be de-
clared ex-

86. Except as in sections 113, 114 and 115 of this Act mentioned, the district registrar shall not receive any instrument, nor make any entry

in the register, containing any notice of trusts whether expressed, implied ^{as in} or constructive. Describing the owner of any freehold or leasehold land, ^{secs. 113, 114 and 115.} or of any mortgage, charge or encumbrance, as a trustee, whether the beneficiary or object of the trust is mentioned or not, shall not impose upon the district registrar or any person dealing with such owner the duty of making any enquiry as to the power of the owner, in respect of the land, mortgage, encumbrance or charge or the money secured thereby, or otherwise, but (subject to the registration of any caveat) the land, mortgage, encumbrance or charge may be dealt with as if such description had not been inserted.

Compare sections 32 and 33 *infra* and "Introductory Analysis," pages 3 and 4 *ante*. Note also the effect of this amendment upon section 3 (22) of the R. P. Act of 1889.

29. Section 95 of said Act is amended by adding thereto the following Section 95 amended.
sub-section:

(1) Any assignment, or mortgage, of any such mortgage or encumbrance, whether such assignment or sub-mortgage be made before or after the issue of the certificate of title, may be made according to the forms in use under the old system, and may be registered under the new system in the same manner and with the same effect as the original mortgage or encumbrance was registered under this section. Assign-ment of such encumbrance may be registered.

See secs. 3 and 4 *supra*.

30. Section 99 of said Act is amended by adding thereto the following Section 99 amended.
sub-sections:

(1) By virtue of every such transfer the right to sue upon any mortgage or other instrument, and to recover any debt, sum of money, annuity, or damage thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest at the time of such transfer in any such debt, sum of money, annuity, or damages, shall be transferred so as to vest the same in law in the transferee thereof; provided always that nothing herein contained shall prevent the court from giving effect to any trusts affecting the said debt, sum of money, annuity or damages, in case the said transferee shall hold the same as trustee for any other person. Effect of assignment of mortgage.

Compare sec. 89 of the R. P. Act of 1885 and 48 Vic. cap. 17, sec. 125 *et seq.* as to the assignment of choses in action.

31. Section 109 of said Act is amended by inserting after the word "where" in the first line the words "land is subject to," and by striking out all the words from and including the word "holder" in the second line down to and including the word "registration" in the fourth line Section 109 amended. To apply to all cases where land encumbered.

thereof, and substituting therefor the words "owner or any former owner of the land, whether such encumbrance is created before or after such land is brought under the new system."

Section 115 amended.
Trust not to be declared.

32. Section 115 of said Act is amended by adding at the end thereof the following words "but shall not refer therein to the fact that the new registered owner is such assignee or trustee or that he holds such land for any other than his own absolute use."

Compare sec. 28 *supra* as to entry of notice of trusts.

Section 117 amended.

33. Section 117 of said Act is amended by adding after the word "thereof" in the eighth line the words "except in the case of an executor, or administrator with the will annexed, who appears to be dealing with the land in a manner contrary to the terms of the will, in which case, and in which case only, it shall be the duty of the district registrar to enquire whether such dealing is proper or necessary in order to carry out the true intention and meaning of the will," and by striking out the word "bankrupt" in the twelfth line and by inserting after the word "property" in the thirteenth line the words "of a deceased person or bankrupt proprietor."

To include deceased person.

Compare amendment as to entering notice of trusts, sec. 28 *supra*.

Loss to assurance fund to be paid without action in certain cases.

34. In any case where it appears that the assurance fund is clearly liable for any loss or damage to any person under any of the provisions of this Act, and where it appears that the claim for loss or damage is a fair and reasonable one, the Provincial Treasurer may, without an action being first brought, pay the amount of any such claim; provided that no such claim shall be paid unless and until the Provincial Treasurer shall be authorized to do so by the reports, advising such payment, of the Attorney-General of the Province, the Inspector of land titles offices and the district registrar of the district in which the land which is the subject of such claim lies.

This section is an additional proviso to sec. 135 of the R. P. Act, 1889.

Section 136 amended.

35. Section 136 is amended by striking out the words "on the case," where they occur in the sixth line.

Schedule N amended.

36. The left-hand column of schedule N to said Act is amended by adding, after the word "covenantee," the following words "that he will not assign or sub-let without leave."

This evident omission has already been noted in the form sec. 91 R. P. Act 1889, p. 141 *ante*.

37. Schedule R of said Act is amended—

(a) By adding, after the word "defendant" in the fourth line of the Judge may direct caveatee to be
 sixth rule, the words "but upon proper cause shewn, a Judge or Judge in Chambers may direct that the issue be tried with the caveatee, as plain- plaintiff.
 tiff, and the caveator, as defendant,"

(b) And by adding thereto, as additional rules, the following:—

15. On the final decision of any matter, under these rules, all the pro- Prothono-
 ceedings, exhibits and instruments filed, and all orders made, touching or tary to
 affecting any question of title to the lands or interest therein, shall forth- transmit
 with be transmitted by the prothonotary to the proper district registrar papers.
 under seal, and shall be filed and kept in the land titles office as part of
 the records thereof.

16. When a district registrar is ordered to issue a certificate of title, Judge directing
 the order shall declare that the title in the lands of the person to whom issue of
 the certificate of title is to issue has been found, upon investigation, to be certificates
 a good safe-holding title. of title
 must cer-
 tify title.

These rules appeared in the R. P. Act of 1885 as amended
 by sec. 14, cap. 22 of 51 Vic., but were omitted in the
 R P. Act of 1889. See note to the following section.

In *Grant v. Hunter*, 1 Western Law Times 36, Killam J.
 stated that the Chief Justice did not intend to lay down as
 an absolute rule in *McCarthy v. Badgley*, (page 194 ante)
 that every applicant must be taken to occupy the position
 of a plaintiff towards the caveator in respect of issues
 under petitions for the enforcement of the caveat; and
 held that the relative position of the parties must depend
 upon the circumstances of each case, and the nature of the
 issue directed.

38. Schedule R is further amended by adding thereto the following Rule 15
 additional rule: added to
 Schedule R.

15. No failure to comply with any of the rules in this Act made as to Order to
 any petition shall in the first instance be considered sufficient to dismiss not
 or set aside such petition, but a motion may at any time be made to be made
 dismiss such petition for want of prosecution or non-compliance with in first
 said rules, and upon the return the judge or judge in chambers may make instance.
 an order that such matter be proceeded with or such non-compliance
 amended or remedied, within a time to be specified in the order, and that
 in default thereof such caveat or petition or any proceeding thereunder

do stand dismissed, and such judge may, upon such return, make such order as to costs as he may see fit.

This rule has been given the same number as the first rule in the foregoing section; cross-references should be made to avoid confusion.

Rule 15 of
Schedule S
amended.

P. O. ad-
dress and
name of
agent to be
given.

39. Rule 15 of schedule S to said Act is amended by inserting after the word "proprietor" in the sixth line thereof, the words "and at or near which he may be served with any notice or proceeding under this Act, and if such applicant or owner is not a resident of this Province, he shall also deliver to the district registrar the name and post office address of some agent within this Province, upon whom any such notice or proceeding may be served in lieu of service upon himself personally, and if such applicant or owner do not so deliver his post office address or name and address of an agent, and if such applicant or owner cannot be found at or near such place in order to effect such service, then upon application the District Registrar may make an order that he may be served by posting up a copy of such notice or proceeding in the land titles office for the district in which the land in question is situate."

Compare sections 53, 54 and 55, pages 96 and 97 *ante*. Such notices as are required by the R. P. Act 1889, sections 44, 48, 49, 52, 57, 89, 103, 106, 120, 121, 130, 137, 143 and 148 may now be effected as provided by this amended rule. See also section 11 *supra*.

Schedule S,
rule 19,
amended.

40. Rule 19 of schedule S to said Act is amended by adding at the end thereof the words "unless the district registrar is satisfied that the land has not been so sold."

41. Said schedule S is further amended by adding thereto the following rule:

Affidavits
not to be
sworn be-
fore part-
ner, etc.

30. Affidavits or statutory declarations in proof of any matter under this Act shall not be sworn or declared before the attorney, solicitor or agent of any applicant for registration, or before the partner, clerk or agent of such attorney, solicitor, agent or applicant.

42. The following additional schedule is added to said Act:

SCHEDULE U.

(Sec. 68, Sub-sec. 3.)

THE REAL PROPERTY ACT OF 1889.

Province of Manitoba.	}	In the matter of application file Form of
The Land titles District of		No. and
To Wit:		(Here describe the lands.)

To

You are hereby commanded, and each of you, that, all other business and excuses whatsoever ceasing, you do appear personally before the district registrar for the Land Titles District of _____, in Manitoba, in the Land Titles Office at _____, in the Province of Manitoba, on _____ the _____ day of _____ next, A.D. 18____, at _____ o'clock in the _____ noon, and so from day today until the matter herein mentioned be disposed of, and also that you bring with you and produce at the time and place aforesaid (here describe the instrument, etc., to be produced), then and there to testify and show all and singular those things which you, or either of you, know, or the said deed, instrument, record, document or writing doth import, of and concerning this matter, on behalf of the applicant; and this you or either of you, shall by no means omit, under a penalty of Five Hundred Dollars, and all other penalties provided by the said Act.

Witness the hand and official seal of the district registrar for the Land Titles District of _____ at _____ this _____ day of _____ A.D. 18____, in the _____ year of our Reign.

[SEAL.]

District Registrar.

See sec. 19 *supra*.

43. Notwithstanding anything in the said chapter 16 and amendments ^{Lodging} contained, a petition under a caveat may be lodged at any time before ^{cavents.} the issue of a certificate of title.

Compare sec. 180, (2), (5), (7), (11), pages 182-190 *ante*.

44. Any person who, prior to the coming into force of this Act, was ^{Actions v.} entitled to bring an action against the Registrar General, may bring such ^{Reg. Gen.} action against the District Registrar within whose jurisdiction the matter ^{saved.} complained of took place, and any notice which should have been given to the Registrar General may be given to such District Registrar.

The next section provides that the action shall be brought against the District-Registrar by his name of office. It should appear that the cause of complaint arose under the repealed Acts.

See sec. 135, p. 199 *ante*.

Actions v.
D. R.

45. All actions against a District Registrar shall be brought against him by his name of office, and shall not abate or be in any way affected by any vacancy occurring in the said office or by any change of officer.

Compare sections 50 and 51, page 94 *ante*.

This section and the preceding one should find their places properly as sub-sections of section 135 of the R. P. Act 1889, p. 199 *ante*.

Section 13
amended.

46. Section 13 of said chapter 16 is hereby amended by striking out all the words therein after the word "same" in the sixth line thereof.

D. R. not
liable to
subpoena
as witness.

47. No District Registrar shall be compellable to attend out of his office as a witness for examination under any subpoena, order or summons issued from any court of this Province, whether such subpoena, order or summons be directed to him personally or in his official capacity, but any such District Registrar may be examined under a commission or otherwise in his office.

Compare sections 125 and 147, R. P. Act 1889, pp. 180 and 207 *ante*.

This section can only apply to cases affecting property and civil rights and matters properly within the Provincial jurisdiction: (*B. N. A. Act 1867*, secs. 91 and 92).

Act in
force.

48. This Act shall come into force on being assented to.

Observe the retroactive effect of sections 1-5 inclusive, and sections 8, 9, 10, 11, 18, 30, 38 and 43 *supra*.

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